

STATE OF WISCONSIN CIRCUIT COURT MILWAUKEE COUNTY  
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STATE OF WISCONSIN,

Plaintiff, JURY TRIAL  
-vs- Case No.04CF000609

DANNY L. WILBER,

Defendant.

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COPY

CHARGE: First Degree Intentional Homicide While  
Armed with a Dangerous Weapon

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February 18, 2005  
Milwaukee, Wisconsin  
Safety Building-Room 316

BEFORE:

THE HONORABLE MARY M. KUHNMUENCH  
CIRCUIT JUDGE

APPEARANCES:

JAMES GRIFFIN, Assistant District Attorney,

Appeared on behalf of the State of Wisconsin.

MICHAEL CHERNIN, Attorney-at-Law,  
Appeared on behalf of the defendant.

Defendant appeared in person.

Lori J. Cunico  
Official Court Reporter

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TRANSCRIPT OF PROCEEDINGS:

THE COURT: State of Wisconsin v.  
Danny Wilber, 04CF000609, first degree  
intentional homicide while armed with a  
dangerous weapon. Appearances please.

ATTORNEY GRIFFIN: Assistant DA  
Jim Griffin for the State, along with Tom  
Casper, Detective Tom Casper, of the Milwaukee  
Police Department.

ATTORNEY CHERNIN: Michael  
Chernin appearing on behalf of Danny Wilber.  
Danny Wilber is here, appears in person.

THE COURT: All right. The court  
wants to conclude the issue of -- and its  
ruling on the issue of demonstrative evidence  
that the State is proposing to introduce to  
the jury. And since they are the proponent of  
the evidence in the court I believe that the  
burden is on them to establish to the court's  
satisfaction that it's relevant testimony and  
that it will assist the trier of fact to  
understand an issue or -- or a question in  
fact in -- in the trial.

And in that regard, as I  
understood it the State wishes to have the

1       defendant stand and to point to a designated  
2       -- stand at the defense table stand at a  
3       designated spot on a -- a board that's about  
4       two feet wide by, it looked to court to be  
5       about ten feet tall, and where there is a line  
6       that has already been delineated and  
7       another -- I'm not quite sure if there was  
8       another line on it or not, or if it was  
9       designated by a spot, but I'll let the State  
10      indicate what the form of the evidence is and  
11      why it's -- why it's relevant and will assist  
12      the trier of fact.

13                     Go ahead, Mr. Griffin.

14                     ATTORNEY GRIFFIN: Judge, the  
15      board has I think actually been marked as  
16      Exhibit 40, although it's back behind the jury  
17      box, not where the jury can see it, but in any  
18      event, it's on the witness -- or the exhibit  
19      list. Part of what I expect will be  
20      Mr. Chernin's closing argument, and part of  
21      what this case is about, of course, is was it  
22      Danny Wilber, where was he, where was the  
23      victim, was he close enough, all of those  
24      kinds of things that the court knows from  
25      having listened to openings, from having seen

1           some of the witnesses up until this point.

2                       My original thoughts, and I think  
3 perhaps what has sort of tainted a lot of --  
4 not -- informally was that my initial thought  
5 was that I would have Mr. Wilber point with a  
6 fake gun in his hand actually to a person such  
7 as one of my fellow DA's, or something like  
8 that, who is five eight, to show the angle.  
9 And I have, in considering all that and  
10 understanding sort of informally and in  
11 discussions with you and Mr. Chernin, at this  
12 point all I want Mr. Wilber to do is to point  
13 without any kind of fake weapon in his hand or  
14 anything like that, to a spot, to show the  
15 jury essentially the downward angle that is --  
16 would have resulted or would be the angle if  
17 Mr. Wilber were the shooter.

18                       I think that, for example, if  
19 this were a case where the person was not  
20 standing up straight when he was shot, and I  
21 expect the testimony to be that Mr. Diaz was  
22 just standing there, so maybe the  
23 demonstration has to wait till that happens,  
24 but for a bullet to go in at that angle, at  
25 that height, with a downward angle, requires

1           essentially one of two things. But regardless  
2           of how it happens -- strike that. One being  
3           that the shooter, when he held the weapon to  
4           Mr. Diaz's head, had the weapon higher than  
5           five eight, at a downward angle, or that the  
6           weapon itself was below that spot on  
7           Mr. Diaz's head, but Mr. Diaz's head was  
8           turned, and I'm demonstrating sort of for the  
9           court, leaning way back and starting to do  
10          what I call a limbo type position, and that  
11          someone below that could then get, as we know,  
12          that kind of downward angle.

13                       Mr. Diaz's head would have had to  
14          have been -- actually his nose would have had  
15          to have been past the point of straight up to  
16          the ceiling. I don't know if I'm explaining  
17          that well to court. If we drop that gun into  
18          the hand of someone who's five six or five  
19          eight, they'd have to be pointing the gun  
20          upward at Mr. Diaz's head from their shoulder  
21          area, which would obviously be below five  
22          eight, their arm would be upward and  
23          Mr. Diaz's head would have to be tilted  
24          backward to get that kind of an angle. Things  
25          which are obviously ridiculous.

1                   Part of what we do with the jury  
2                   is we tell them to use their common sense.  
3                   And I don't think the jury -- I think the  
4                   State has a right to show that while the jury,  
5                   in walking in and out of the room has seen  
6                   Mr. Wilber standing, and they know he's a tall  
7                   man, I think Mr. Niles testified he was maybe  
8                   six two, I think Ms. West testified he was six  
9                   nine, but there's no specific evidence on the  
10                  record for this jury about where Mr. Wilber  
11                  would be specifically in relation to a -- a  
12                  five eight victim in terms of his arm angle.

13                   I'm reasonably certain that were  
14                  the situation to the contrary, there would be  
15                  much discussion, as there should be, and  
16                  argument, or would be from the defense, about  
17                  how that angle was impossible. That if the  
18                  wound, for example, were in Mr. Diaz's  
19                  buttocks at an upward angle, it would have had  
20                  to have been a midget who shot him and not  
21                  someone who was six eight or six nine or  
22                  whatever height it is in fact that Mr. Wilber  
23                  is.

24                   So is I think it's relevant  
25                  because it establishes for the State our whole



1 theory -- one of the parts of our theory the  
2 case in the notion that Mr. Wilber --  
3 obviously the State's whole theory is that  
4 Mr. Wilber is the shooter. And that when he  
5 holds his arm out and points it at a five  
6 eight person, in this case a spot on the  
7 board, the argument would be that it was a  
8 person, that he gets the downward angle.

9 Now, I -- I agree that having  
10 Mr. Wilber hold a gun, pointing it at a  
11 person, all those things, those would be I  
12 think unduly suggestive, unduly prejudicial,  
13 and there's a way to accomplish the same  
14 without that kind of prejudice. But I think  
15 that -- I understand that I'm the DA, but I  
16 try and think if I were on a jury would I find  
17 that kind of thing helpful to me. Would it  
18 help establish the fact that of the realm of  
19 possible shooters in this case, it's a very  
20 small group of people who could have done this  
21 obviously, there's not that many people in the  
22 house or in the kitchen at the time this  
23 shooting happened.

24 And there's only one who's as  
25 tall as him and there's only one whose arm,

1       when he holds his arm straight out, if he held  
2       it straight out and fired he would have missed  
3       Mr. Diaz, the bullet would have sailed over  
4       Mr. Diaz's head. He has to have a downward  
5       angle. And while I understand there's  
6       arguments to be made that perhaps Mr. Diaz's  
7       head was tilted one way or another, the  
8       physical reality of it is that the gun had to  
9       be above five eight pointed in a downward  
10      angle. And Mr. Wilber is one of the people in  
11      that house, the only one, unless he was  
12      sitting on a -- someone else was on a stool,  
13      or I believe Mr. Chernin suggested steps or  
14      something like that, that could do that,  
15      unless again, Mr. Diaz's head was completely  
16      arched back, I think past the point where his  
17      nose would have been straight up toward the  
18      ceiling at exactly the time the bullet entered  
19      his head. And we know this gun was two to  
20      three inches from his scalp at the time it was  
21      fired. So for those reasons I believe it's  
22      relevant.

23                   And while I believe that  
24      there's -- there's always some potential  
25      prejudice to this, this -- that notion is --

1 is I think well established that in theory  
2 every moment I spend in here in front of the  
3 jury is to prejudice Mr. Wilber. That's what  
4 I'm supposed to do. I'm supposed to put in  
5 evidence that makes it look like he's the  
6 killer, otherwise I'm -- I'm not doing  
7 anything particularly useful.

8                   The question becomes is the  
9 relevancy not outweighed by the danger of  
10 unfair prejudice, substantially outweighed by  
11 the danger of unfair prejudice. In other  
12 words, when the jury sees Mr. Wilber point to  
13 that spot on the board, will that overcome  
14 reason, will they then be making their  
15 decision based on sympathy, prejudice,  
16 passion, emotion, a desire to vent rage about  
17 a crime in the community that his -- his race  
18 or anything like that? No. His height and  
19 the angle of this gunshot are an important  
20 part of this case, from the State's  
21 perspective. The same way how Mr. Diaz ended  
22 up lying on the floor in the position he did  
23 is an important factor for the defense. I  
24 expect to hear a lot of it from Mr. Chernin in  
25 closing.

1                   So that's why I think it's  
2           relevant and why I think that while there may  
3           be some prejudice here. I don't think it's  
4           the kind of unfair prejudice that -- that in  
5           any way substantially outweighs the  
6           relevance. Again, I know I look at things my  
7           way, I don't see any unfair prejudice here. I  
8           can't think of any unfair prejudice, unless of  
9           course the court rules that it's testimonial.  
10          If it's testimonial then really we don't get  
11          to that issue, I agree I can't do it, I'm not  
12          going to sneak it in through the back door or  
13          anything like that.

14                   But I -- I think that for  
15          Mr. Wilber to hold his arm up and point to a  
16          spot on a board that's at five eight is  
17          relevant to the issues in this case for the  
18          reasons I've said, and that relevance is not  
19          substantially outweighed by the danger of  
20          unfair prejudice, the confusion of any of the  
21          issues, it's not cumulative, and I believe it  
22          will assist the trier of fact in terms of  
23          understanding the spatial relationships  
24          between Mr. Diaz's head, the entrance gunshot  
25          wound and the person who I obviously believe

1 and am arguing is the shooter.

2 THE COURT: Mr. Chernin.

3 ATTORNEY CHERNIN: Well, I assert  
4 as I have the past several days, that the --

5 THE COURT: I'm going to have you  
6 use the mike.

7 ATTORNEY CHERNIN: I'm sorry.

8 That the matter is -- that the request being  
9 made by the District Attorney's office is one  
10 that compels burden shifting, in that it is  
11 testimonial. Now, how is it testimonial?  
12 Well, if Mr. Wilber is a right-handed person,  
13 he's being compelled to raise his right hand.  
14 If he's left-handed or engages in certain  
15 actions with his left hand, I don't know, I  
16 mean, he might throw right and bat left, bat  
17 left and throw right. And we don't know what  
18 -- how he would hold a gun. And so what in  
19 effect it does is it creates an inference that  
20 Mr. Wilber is revealing how he would engage in  
21 his personal thoughts as it applies to  
22 shooting a gun. And that is testimonial.

23 So that's the issue that is  
24 looked at in Hubanks at 173 Wis. 2d 1, a 1993  
25 Court of Appeals case, and Mallick, State v.

1        Mallick at 210 Wis. 2d 427 and that's a Court  
2        of Appeals case from 1997. The court in -- I  
3        don't recall if it was -- I think it was on  
4        the record reference, referred to Pennsylvania  
5        v. Muniz. The Muniz case really deals with an  
6        out-of-court matter. It's not an in-court  
7        demonstration, so I don't think it's  
8        applicable in this case. I think the two  
9        cases that really focus on in-court  
10       identifications are the two Wisconsin Court of  
11       Appeals cases.

12                        So the first part of it -- of my  
13       argument is that the State is requesting that  
14       Mr. Wilber engage in, first of all,  
15       testimonial conduct. And we know that a  
16       statement can be nonverbal contact -- or  
17       nonverbal conduct, as that is defined in the  
18       evidentiary code, if you look at Section  
19       908.01 under the definition of statement. So  
20       if -- it would be a statement and conduct can  
21       be a statement.

22                        Now, the difference as I see it  
23       between Hubanks, which is a closer analogy to  
24       what Mr. Griffin is requesting than the  
25       Mallick case, in Hubanks there was the request

1 for an in-court identification. The in-court  
2 identification relates to a statement made in  
3 the course of an armed robbery -- or maybe it  
4 was sexual assault.

5 THE COURT: Sexual assault.

6 ATTORNEY CHERNIN: I'm sorry, I  
7 meant sexual assault. And it is a sexual  
8 assault case. And there it was for the  
9 purpose of allowing the witness to engage in  
10 an in-court identification. Here there's no  
11 testimony in the record.

12 THE COURT: Let's stop right  
13 there.

14 ATTORNEY CHERNIN: Yeah.

15 THE COURT: There the words --  
16 the exact words that were ostensibly used by  
17 the assaulters, those that were sexually  
18 assaulting the victims in that case in the  
19 Hubanks case, were the defendant was asked to  
20 repeat those exact words in front of the  
21 jury. And I guess I'm trying to understand  
22 how -- how -- and I don't mean to suggest that  
23 you'd be arguing it, but it seems to -- what  
24 you seem to be suggesting by your argument  
25 thus far is that this demonstration would

1        somehow be -- have more prejudice or would be  
2        more testimonial in nature than an individual  
3        who's actually asked in court in front of a  
4        jury to speak words, not to -- and to speak  
5        words that were used ostensibly by the  
6        attackers in the assault.

7                    It seems to me that that's, you  
8        know, one could make the argument, and I'm  
9        sure the defense did in that case, that that's  
10       clearly testimonial and -- and highly  
11       inflammatory, because of the nature of the  
12       words that were used, and that to ask a  
13       defendant to essentially assume the position,  
14       at least through wordage of the actual  
15       attackers in front of the jury, seems to be  
16       highly inflammatory, and yet the -- the  
17       court -- the trial court said, no, that --  
18       that -- to both questions, and especially to  
19       the second one with respect to the prejudice,  
20       it could be cured by an instruction, and the  
21       Court of Appeals agreed with the circuit court  
22       judge and assistant district attorney.

23                   ATTORNEY CHERNIN: But you see,  
24        that was the problem in Hubanks for the  
25        defense. One of the things that they didn't



1       argue, and that's footnote 7, addresses the  
2       inflammatory and prejudicial issue.

3                   THE COURT:  No, they argued it  
4       but not in the context of the statements, they  
5       argued it in terms of the defendant's refusal  
6       to do it and the instruction that the judge  
7       gave to the jury.

8                   ATTORNEY CHERNIN:  Right.  But  
9       that -- that was a different issue, Your  
10      Honor, because the -- the -- the issue that  
11      they were addressing was when Judge Randa  
12      said, here's the instruction that I'm going to  
13      give, that's what they argued was  
14      prejudicial.  They didn't argue that the  
15      conduct itself was prejudicial.  And I'm  
16      focusing on the matter in footnote 7, where if  
17      we're going to -- and I haven't quite gotten  
18      on that point yet in my argument, but let me  
19      respond to the court's --

20                  THE COURT:  Just the testimonial  
21      issue that you've raised thus far.

22                  ATTORNEY CHERNIN:  Right, the  
23      testimonial issue.  Let me respond what the  
24      court's inquiry was.  The matter that -- the  
25      distinction between what makes testimonial is,

1       for example, if -- if Wilber were wearing a  
2       hood over his face during the course of an  
3       identification request for an in-court  
4       identification, I think it's clear that the  
5       court can make Mr. Wilber take off a face mask  
6       or put on a face mask, if that would help an  
7       in-court identification.

8                   THE COURT: But that -- let me  
9       just stop you there.

10                  ATTORNEY CHERNIN: Yeah.

11                  THE COURT: Let's get off this  
12       identification issue, because what you seem to  
13       be suggesting -- and I don't think there's any  
14       case law that supports this -- is that  
15       demonstrative evidence in court is limited to  
16       identification. I don't think the Hubanks  
17       case says that at all.

18                  ATTORNEY CHERNIN: Well, it  
19       doesn't say that, but that's what the issue  
20       was that they were exploring.

21                  THE COURT: Right.

22                  ATTORNEY CHERNIN: And so I'm  
23       saying this is different than that, so I don't  
24       think that Hubanks is controlling.

25                  THE COURT: Explore that with

1 me. In fact, if -- if demonstrative evidence  
2 can be used for identification purposes of an  
3 individual in court, a defendant in court,  
4 what arena do you put this into? This type of  
5 demonstration. If this is not identification,  
6 what is it? That seems to be your -- your  
7 position, that it's something else that's not  
8 permissible by demonstrative evidence.

9 ATTORNEY CHERNIN: Well, because  
10 there's no one that has identified this man as  
11 holding up a gun to --

12 THE COURT: But that's not what  
13 the State -- I want you to respond to the  
14 State's argument. The State's argument is  
15 we're not offering it for identification,  
16 Judge, we're offering it to -- our theory of  
17 the case is that the defendant's size is  
18 consistent and -- and the way he does -- the  
19 angle of his arm as I understand it is  
20 consistent with other evidence that has  
21 already been presented in this case, and that  
22 he anticipates is something that you're going  
23 to be rebutting and arguing in your defense,  
24 and that is the trajectory of the bullet from  
25 an upward to a downward, from a back to a

1 forward, from a left to a right angle.

2 And we've already had testimony  
3 from Doctor Jentzen on that point, and that  
4 that -- and it was established, I believe  
5 through Doctor Jentzen, that from the State's  
6 questioning, that the trajectory, or the line  
7 of the bullet, and even added points on that  
8 line to be the gun nozzle, you assume that  
9 that's one point on the line, the back of the  
10 head is another point on the line, which is  
11 the entry wound, and the exit wound, which is  
12 in the nasal cavity on the --

13 ATTORNEY CHERNIN: It's one inch  
14 below the orbital.

15 THE COURT: That that is the  
16 final point on the line, that that is all  
17 consistent with a downward trajectory.  
18 Meaning that someone would have to have been,  
19 from the State's perspective, and I assume  
20 they're going to argue the law of physics,  
21 that it was a downward -- someone had to be  
22 above the individual, the victim in this case,  
23 when the shot was actually fired. And that  
24 the defendant's height is very consistent with  
25 that theory, and that they want to be

1       available to demonstrate that -- the spatial  
2       points through the -- through the defendant  
3       doing this demonstration. That's what the  
4       State is offering it for. I don't think it's  
5       for identification.

6                   ATTORNEY CHERNIN: Well, then  
7       you've hit the nail on the head, Your Honor,  
8       because the only thing that that can be doing  
9       is asking for this defendant to engage in  
10      testimony against --

11                   THE COURT: How? But see that's  
12      where I'm losing you, because what the Hubanks  
13      case said, you've hit on it twice but you  
14      haven't persuaded me yet, Mr. Chernin, and  
15      that is somehow this goes to the defendant's  
16      state of mind, and it is actually, you know,  
17      requiring him -- that's why it's testimonial  
18      in nature, because it's getting to his psyche  
19      somehow and forcing him to communicate what  
20      was going on in his mind at the time of the  
21      shooting. That demonstration to me doesn't  
22      show that.

23                   The demonstration that the State  
24      is suggesting is, you know -- and they've  
25      taken away one aspect that would be

1        inflammatory, that is the firearm itself,  
2        whether it was going to be a plastic one, and  
3        they are not asking him to point, they are --  
4        at any individual, they are asking him to  
5        point at an angle or a line on a board. How  
6        is that suggestive -- and it's to demonstrate  
7        the -- as I understood it, the spatial  
8        dynamics of what's going on here in terms of  
9        the State's theory of the case -- how is that  
10       going to the defendant's state of mind?  
11       Because that's the key, Mr. Chernin. You've  
12       raised it twice and it is what you maybe  
13       talked about, it's not going to his state of  
14       mind, but you think that it does. So tell me  
15       how it does.

16                    ATTORNEY CHERNIN: Well, now the  
17       court's asked me a different question, and I  
18       think I've answered that one. Mr. --

19                    THE COURT: No, no, you haven't.  
20       I'm not -- you have said that, you know, it's  
21       testimonial in nature. To be testimonial in  
22       nature, at least if you're going to be quoting  
23       from Hubanks, it requires -- what Hubanks was  
24       arguing directly goes to his state of mind,  
25       that the jury's going to believe that those

1 are the things he was thinking as he then said  
2 them at the scene, and the court determined  
3 that it was not testimonial in nature.

4 So what is it about this  
5 demonstration in this case, as the State has  
6 explained it to the court and to you, that is  
7 testimonial in nature, that goes to the  
8 defendant's state of mind --

9 ATTORNEY CHERNIN: Okay.

10 THE COURT: -- and thus forcing  
11 him to compel him to testify in violation of  
12 his Fifth Amendment right?

13 ATTORNEY CHERNIN: Is Mr. Wilber  
14 right-handed or left-handed, Your Honor?

15 THE COURT: I don't know. And I  
16 don't know that it makes a difference for  
17 purposes of the demonstration.

18 ATTORNEY CHERNIN: Well --

19 THE COURT: I haven't heard that  
20 from the State, except they want him to point.

21 ATTORNEY CHERNIN: What?

22 THE COURT: They simply want him  
23 to point with an arm extended. I don't  
24 particularly care what he is, if he's left or  
25 right-handed. For purposes of the

1 demonstration I don't know that he has -- I  
2 mean, if he wants to raise his right hand, if  
3 he's wants to use his left hand, if the State  
4 directs him to just point it's up to him, I  
5 suppose, to point with whichever hand he wants  
6 and whatever arm he wants.

7 ATTORNEY CHERNIN: Well, then  
8 that's what's testimonial, Your Honor, because  
9 --

10 THE COURT: Because he's going to  
11 have to think, what am I, am I right-handed or  
12 left-handed, and that the shooter now is left-  
13 handed somehow?

14 ATTORNEY GRIFFIN: He can point  
15 with both if he wants, that way there's no  
16 indication that -- we'll pick which one out of  
17 the hat, we can tell the jury we picked L so  
18 he can point with his left first, R with his  
19 right second, that's not the point. And I  
20 don't think there's any question in here, and  
21 I'd like Mr. Chernin to respond, if you  
22 ordered this defendant right now to go in back  
23 and point to that board while we videotaped  
24 him, would there be any reason we couldn't  
25 play that videotape for the jury? None?



1 THE COURT: That's the point I'm  
2 trying to get to, but Mr. Chernin says there  
3 is, because his first objection is that it's  
4 different, unique, from the specifics in  
5 Hubanks because this is clearly testimonial in  
6 nature, and I'm failing to see it. And so I  
7 need you to convince me, Mr. Chernin.

8 ATTORNEY CHERNIN: First of all,  
9 let me respond to Mr. Griffin. If you were to  
10 go back there and say, you know, Mr. Wilber  
11 you have an absolute right to remain silent,  
12 anything you say or do, and the 'or do' can be  
13 held against you.

14 ATTORNEY GRIFFIN: That's not his  
15 right. He doesn't have a right to refuse  
16 things without the jury finding out, like that  
17 he refused to be in a lineup, he refused court  
18 ordered handwriting exemplars or things like  
19 that, that's the point. If the court orders  
20 him to do certain things he has to do them  
21 or -- or essentially pay the cost of the  
22 inference for refusing to do that. He has a  
23 right to not raise his arm in front of the  
24 jury, but the jury has a right then to know  
25 that.

1 But I apologize, you know what --  
2 THE COURT: I -- I really would  
3 like to take this issue back over.  
4 Mr. Chernin --  
5 ATTORNEY GRIFFIN: Sorry.  
6 THE COURT: -- you raised two  
7 points yesterday and I wrote them down and I  
8 just wanted be able to flesh them out a little  
9 bit fuller for me, because on the issue --  
10 first issue, the issue of testimonial in  
11 nature, I'm stuck and I need you to convince  
12 me. I don't see how this demonstration is any  
13 more testimonial than -- than what was clearly  
14 allowed in the Hubanks case, where somebody  
15 actually was required to state words that  
16 ostensibly were used by individuals engaged in  
17 a sexual assault. How this demonstration is  
18 somehow more testimonial in nature than that,  
19 I'm -- I'm failing to see it.  
20 And the point that they raised in  
21 Hubanks case, and that I keep coming back to,  
22 is something that have you have raised twice,  
23 which is that it goes to state of mind, where  
24 you're actually asking him to make some  
25 definitive, you know, what was going through

1 his head when he was actually saying these  
2 words or exercising his choice as to what arm  
3 he's going to use, I'm failing to follow that  
4 argument.

5 I -- I -- the demonstration as I  
6 understand it, is -- and I've raised some  
7 other issues along the way because I wanted to  
8 make sure that I wasn't misinterpreting your  
9 position -- and that demonstrative evidence  
10 can be used for a variety of things. If it's  
11 going to -- it's admissible beyond just  
12 identification, which was the issue in the  
13 Hubanks case. So I wanted to make sure that  
14 we were clear on that, that you're not telling  
15 me, well, whoa, whoa, whoa, unless it's used  
16 for identification, because it seemed like you  
17 were suggesting that, then it's demonstrative  
18 evidence that can't be used, and I don't know  
19 that that's the case.

20 Demonstrative evidence comes in a  
21 lot of different forms, stand up, speak these  
22 words, try a glove on, put a sweatshirt on and  
23 pull it over your head. You've given that  
24 example. There are a variety of different  
25 things that a court has ordered in terms of

1 demonstrative, that is a demonstration in  
2 front of the trier of fact, if it will assist  
3 them in their -- in their, you know, visually  
4 in exercising their duty, which is to, you  
5 know, to be a trier of fact, to determine what  
6 facts are true or not true, or have been  
7 proven or not proven by the evidence. That's  
8 their role.

9 Will this -- and that's why I  
10 keep focusing in and trying to get both of you  
11 to sort of -- and I've made Mr. Griffin do it  
12 and I'm making you do it, I made Mr. Griffin  
13 tell me, why is this relevant, and if it is  
14 relevant, what, you know, what's prejudicial  
15 about it or unduly prejudicial, such that I  
16 should not allow it. He's responded to that.  
17 You're indicating to me, that, Judge this is  
18 testimonial in nature, and I -- and I'm not  
19 buying that.

20 ATTORNEY CHERNIN: Well, it's  
21 either you're not buying it or I haven't given  
22 you an example that you can understand, so let  
23 me try it one more time.

24 THE COURT: Okay.

25 ATTORNEY CHERNIN: And I

1 appreciate what the court is saying.

2 THE COURT: Go ahead.

3 ATTORNEY CHERNIN: Let's talk  
4 about the -- all of the examples that the  
5 court gave were matters where, try on a hood,  
6 say these words, whatever, however you want to  
7 couch those, first of all, those -- those all,  
8 as I would see them, would be witnesses saying  
9 that the person who committed the crime did X,  
10 Y or Z. Had a hood, said these words, painted  
11 his face green, whatever.

12 THE COURT: Correct.

13 ATTORNEY CHERNIN: Okay. Now the  
14 difference here is that there is -- in those  
15 types of situations, the identification --  
16 those are being offered in support of other  
17 witnesseds' testimony from the stand, where  
18 they're saying a six seven guy, this would be  
19 in this case, a six seven guy stuck out his  
20 right arm, held a gun to the back of Diaz's  
21 head, pulled the trigger. Okay.

22 THE COURT: That's one fact.

23 ATTORNEY CHERNIN: Then --

24 then --

25 THE COURT: But what about the --

1       wait a minute -- what about the evidence,  
2       Mr. Chernin, that we have from Doctor Jentzen,  
3       which you cross examined him on these  
4       points --

5                   ATTORNEY CHERNIN:   Yes.

6                   THE COURT:   -- in terms of the  
7       location, not only the distance of the shot,  
8       the location of the victim's body, the  
9       location of the entrance wound, the exit  
10      wound, what kind of a path was that in, the  
11      doctor both on direct and cross examination  
12      has put evidence in consistent with the  
13      State's theory of the case, as they have  
14      explained it in their opening, and as the case  
15      has, you know, folded thus far through their  
16      examination of witnesses of a downward  
17      trajectory.  That is that whoever shot the  
18      victim in this case, David Diaz, who the  
19      record is reflecting was between five six or  
20      five eight, depending on shoe size or  
21      whatever, or soles or heels of a shoe, and  
22      that the bullet, the entrance wound, came from  
23      an angle from a downward to -- from an upward  
24      to a downward trajectory, that if you were to  
25      draw a line that's we're talking about.

1 ATTORNEY CHERNIN: Okay.

2 THE COURT: And what would have  
3 prevented to -- for the jury to have  
4 visualized that -- in fact the witness, Doctor  
5 Jentzen, was attempting to try and to  
6 demonstrate that for the jury. And there was  
7 no objection on that in terms of his position  
8 that this was the way, from the autopsy, the  
9 wound -- the injury had to have occurred  
10 from -- in his thinking, in his -- the way he  
11 reconstructed this from the entrance wound and  
12 the exit wound, that it had to come from  
13 someone who was ostensibly in a -- in a  
14 position to have a downward angle upon  
15 Mr. Diaz's head.

16 What would have prevented the  
17 State from asking the defendant at that point  
18 to have stood up with that board as the -- as  
19 the -- as the witness is -- Doctor Jentzen is  
20 describing this, so that the defendant could  
21 be a participant to demonstrate that in front  
22 of the jury about how using that board that  
23 the State has created, about how that angle  
24 would visually -- to -- to demonstrate the  
25 spatial angles, the visualization of what the

1 doctor was testifying to to the jury? Would  
2 that have been impermissible demonstration  
3 evidence?

4 ATTORNEY CHERNIN: Well, if  
5 Doctor Jentzen had said that it required a six  
6 seven person to get this particular angle with  
7 this particular person, I -- I -- I guess that  
8 even that would create a problem, but Doctor  
9 Jentzen didn't say -- all that Doctor Jentzen  
10 says, it's a downward angle, we all know it's  
11 a downward angle. How does having my client  
12 participate and show that this is how he would  
13 have done it that the angle?

14 THE COURT: He's not being asked  
15 to demonstrate how he would have done it.

16 ATTORNEY CHERNIN: Yes, he is.

17 THE COURT: He's being asked to  
18 extend his arm to a point, a given point on a  
19 board.

20 ATTORNEY CHERNIN: No, that's  
21 not. It's how he would have participated in  
22 this type of conduct. And that's what you're  
23 asking him to do. How he would have created  
24 this path of a downward bullet. And that's  
25 what you're trying to put him on the stand to



1 do -- or not on the stand, but in fact it's on  
2 the stand by having him do that. And --

3 THE COURT: How is that  
4 inconsistent with having a defendant state  
5 words that were actually said by an attacker  
6 at the scene of a sexual assault?

7 ATTORNEY CHERNIN: Because --

8 THE COURT: That's as if what the  
9 jury was hearing, these are the words that  
10 came from this man at the scene.

11 ATTORNEY CHERNIN: No. If one of  
12 these witnesses were to get up and say, you  
13 know, if I saw this -- if I saw Danny Wilber  
14 holding his arm out to somebody who's five  
15 eight, that's how I could identify him being  
16 the person who I saw doing the shooting.  
17 That's using him for demonstrative purposes of  
18 -- that's being a -- demonstrative evidence of  
19 something that was offered as evidence. It's  
20 demonstrative, it's showing evidence.

21 THE COURT: And this isn't?

22 ATTORNEY CHERNIN: This is not.  
23 This is creating evidence through Mr. Wilber's  
24 acts, not through the --

25 THE COURT: Would it be creating

1 evidence if we used somebody else to do it?

2 ATTORNEY CHERNIN: No, but --

3 THE COURT: Why is it not  
4 creating evidence to have -- if it's an issue  
5 that's not a fact in evidence? What  
6 difference does it make who does it?

7 ATTORNEY CHERNIN: Because that's  
8 the whole point of the Fifth Amendment, it's  
9 having him Mr. Wilber incriminate himself.  
10 You can have -- you can have, you know, Doctor  
11 J come in here and do it, who's six seven, I  
12 don't -- you know, that's fine. If Mr. --

13 THE COURT: But you've just said  
14 that would be creating evidence.

15 ATTORNEY CHERNIN: Yes, there's  
16 nobody that said that a six seven guy lined it  
17 up -- lined up this arm.

18 THE COURT: Then it's not okay  
19 that we could have Doctor J or anybody else  
20 for demonstration either?

21 ATTORNEY CHERNIN: Sure, it is.  
22 He can put on a demonstration, he can put on  
23 this demonstration with Doctor Jentzen,  
24 whoever he wants to, he just can't do it with  
25 this person.

1 THE COURT: Okay. Then what  
2 relevance -- now we're getting to it. If that  
3 demonstration is permissible, what -- for what  
4 relevance is it?

5 ATTORNEY CHERNIN: I'm not the  
6 proponent of it, I don't know what his offer  
7 of relevance is.

8 THE COURT: But you're saying --

9 ATTORNEY CHERNIN: I don't know.  
10 You're asking me to say what the relevance is  
11 to Mr. Griffin. I don't know.

12 THE COURT: You're agreeing that  
13 it would be permissible, under what basis do  
14 you think it would be permissible? If you're  
15 the judge under the scenario you created,  
16 you're -- you believe that the State could put  
17 that kind of evidence in in front of the  
18 jury? It's only when we get into the arena of  
19 having your guy, the defendant, do it, that it  
20 becomes impermissible. And that all goes  
21 to -- it's not the creation of evidence,  
22 because if it's creation of evidence then  
23 whoever does the demonstration it's going to  
24 be impermissible. But if it's because it's --  
25 the difference is when it's -- when your guy

1 does it that somehow that's testimonial, we're  
2 back to the same very same issue I asked you  
3 before.

4 ATTORNEY CHERNIN: No, but then  
5 that is it, I mean then it becomes  
6 testimonial, because you -- what -- the person  
7 that you're looking at, the person that has  
8 the Fifth Amendment right against self-  
9 incrimination is the person who's seated next  
10 to me.

11 THE COURT: All right.

12 ATTORNEY CHERNIN: Having  
13 somebody else do it, I mean if -- if it is  
14 permissible, then having somebody else doing  
15 it is they're engaging in the incriminatory  
16 conduct. They're doing the incriminatory  
17 display, saying this is what it is. It's not  
18 permissible.

19 THE COURT: And a defendant in  
20 Hubanks being asked to restate words used at a  
21 crime scene of a sexual assault is not  
22 incriminatory?

23 ATTORNEY CHERNIN: The difference  
24 is in Hubanks the witness said this is what  
25 the person did. There's nobody --

1 THE COURT: And having the  
2 defendant get up and say those words is not  
3 against -- in violation of his Fifth Amendment  
4 right, to be free from self-incrimination,  
5 putting himself right into the position of  
6 whatever it is that -- who the attacker was,  
7 saying those words that the defendant's now  
8 being made to say those exact words in front  
9 of a jury, that that's not incrimination?

10 ATTORNEY CHERNIN: That was  
11 identification, and -- and it may be an  
12 incriminatory identification.

13 THE COURT: And yet the court  
14 allowed it.

15 ATTORNEY CHERNIN: Yes, the court  
16 allowed it.

17 THE COURT: You just happen to  
18 disagree with it?

19 ATTORNEY CHERNIN: I -- I -- I  
20 have other issues with Hubanks, I understand  
21 what the law is on that. And I'm saying, yes,  
22 if you -- if you asked Mr. -- if somebody came  
23 in here and said that Mr. Wilber before the  
24 shot said, you know, David Diaz, I don't like  
25 you, bang, okay, and the only way that

1       somebody could identify the shooter was to  
2       have Mr. Wilber say, David Diaz, I don't like  
3       you, I'd agree that ~~Hubanks~~ says that you can  
4       make him do that. That's for purposes of --  
5       of offering the jury supporting evidence based  
6       upon evidence offered by another witness, and  
7       it's demonstrative of that evidence.

8                       This is not demonstrative of any  
9       evidence but for Mr. Griffin's theory that  
10      there is the only way that this could happen.  
11      I mean, you know, I'm not six seven, I'm five  
12      eight, and if I'm -- if I -- if I have -- if I  
13      pulled Mr. --

14                     THE COURT: Mr. Chernin, I get  
15      your point because you've raised that before,  
16      but that goes to the weight, not the  
17      admissibility. Those are the very arguments  
18      you're going to be able to make to the  
19      State -- or to the jury rather, about what the  
20      significance of that evidence is, if any.  
21      That there are so many variants and variations  
22      that are inconsistent with it, we don't know,  
23      you know, the State says this, but we don't  
24      know any of these things, why isn't that  
25      handled through the arguments that you give,

1       that you make as to the weight the jury should  
2       give that, consistent with any other  
3       admissibility evidence?

4                ATTORNEY CHERNIN:   Okay.   As I  
5       understand it, the court is ruling against me  
6       on the testimonial issue.

7                THE COURT:   Correct.

8                ATTORNEY CHERNIN:   But now is  
9       saying, let's look at the -- the undue  
10      prejudice issue --

11              THE COURT:   Correct.

12              ATTORNEY CHERNIN:   -- because  
13      you're saying, look, this might confuse the  
14      jury because there's so many variables out  
15      there as to how it occurs that --

16              THE COURT:   I'm not saying that.  
17      I'm saying if that's what you believe, that  
18      there are so many other responses that that  
19      evidence could give, that's your theory,  
20      that's your obligation, then I would assume to  
21      argue that to the jury that -- the weight that  
22      they should give.

23              ATTORNEY CHERNIN:   I'm not  
24      talking about weight, now we're talking about  
25      this could serve to confuse the jury because

1       there are so many variables, and I don't -- I  
2       really -- it doesn't matter to me which -- if  
3       the court says this is testimonial or unduly  
4       substantially -- substantially unfair  
5       prejudice, I don't care which way you rule for  
6       me, but, okay, if that's what the court's  
7       saying, that it's substantially unfair --

8               THE COURT: I didn't say that.

9               ATTORNEY CHERNIN: Well, not yet.

10              THE COURT: You want to argue  
11      that. Go ahead.

12              ATTORNEY CHERNIN: Not yet, but  
13      I'm hoping you'll join me today.

14              THE COURT: I know, but I want  
15      you to tell me how, so get there.

16              ATTORNEY CHERNIN: Okay. Well,  
17      because when evidence is a waste of time and a  
18      needless presentation of cumulative evidence,  
19      one, we know this is a downward arm, this is  
20      cumulative of being a downward arc, it doesn't  
21      serve any other purpose. Doctor Jentzen's  
22      already displayed what a downward arc is, so  
23      it's cumulative. Is it a waste of time? I  
24      think it's a waste of time because it's so --  
25      there's so many variables as to how this could



1 have happened and we don't have anybody saying  
2 exactly where David Diaz was standing at this  
3 time.

4 We have a general area. We don't  
5 know -- we haven't had anybody say that there  
6 wasn't somebody standing behind him. We have  
7 heard testimony saying that the gunshot came  
8 from the living room area, that's all that's  
9 in the record so far. We don't have anybody  
10 saying that Danny Wilber was behind David  
11 Diaz. Can we agree on that?

12 THE COURT: I'm not agreeing on  
13 anything. I'm not the trier of fact here.

14 ATTORNEY CHERNIN: Okay. But you  
15 haven't heard any evidence to suggest that  
16 Mr. Wilber was anywhere other than in front of  
17 David Diaz.

18 THE COURT: That's your  
19 position. Go ahead.

20 ATTORNEY CHERNIN: We have that.  
21 Is it misleading to the jury? I think it is  
22 misleading, because of the many different  
23 variables. We have the downward arc, that's  
24 fine. Is it confusing? I think it's a bit  
25 confusing, because so far we have nothing to

1 suggest that Mr. Wilber was behind this dead  
2 man to suggest that he was the one that fired  
3 the shot in the downward trajectory.

4 But lastly, is it unfairly -- is  
5 there a danger of unfair prejudice? Does this  
6 substantially outweigh the value of this  
7 evidence? And the unfair prejudice in this  
8 case does, because what it does is it creates  
9 a menacing picture through the defendant  
10 himself of the conduct of him on that night,  
11 and so far there's nobody that's offered that  
12 evidence. And all we're trying to do is  
13 humiliate Mr. Wilber, make him look like a  
14 menacing animal in front of this jury. And  
15 that's unfair. If Mr. Griffin wants to argue  
16 that, that's fine, but don't make him pose in  
17 that way. That's unfair.

18 THE COURT: Is it unduly  
19 prejudicial? Two different concepts.

20 ATTORNEY CHERNIN: Is it unduly  
21 prejudicial? Well, yes, it is.

22 THE COURT: You're putting the  
23 words as to what that act will demonstrate, a  
24 menacing animal. You saying it doesn't make  
25 it so. That's the only conclusion that

1           somebody could draw from that demonstration.

2                   ATTORNEY CHERNIN:   What else is  
3           it intended to mean?

4                   THE COURT:   What the State has  
5           indicated.

6                   ATTORNEY CHERNIN:   What's that?

7                   THE COURT:   Mr. Griffin.

8                   ATTORNEY GRIFFIN:   Well, first of  
9           all, how someone pointing to a board makes  
10          them look like a menacing animal is a little  
11          beyond me, and I think that's just the  
12          judgment call the court's going to have to  
13          make. I'll say this. If the court finds that  
14          Mr. Wilber pointing to that spot on a board  
15          makes him look like a menacing animal I will  
16          withdraw my request. Mr. Chernin must walk  
17          around quite frightened if he thinks every  
18          time somebody walks around pointing at  
19          something they look like a menacing animal.

20                   And for what it's worth, and just  
21          for the record, I even said to Mr. Chernin at  
22          one point, if this were a situation we were  
23          asking the guy to, you know, show his parts,  
24          private parts or whatever, to the jury in some  
25          kind of bizarre fashion or something, those

1 kinds of things would be unduly prejudicial or  
2 make his him look strange or funny in a way  
3 that's unfair. All he's going to do is  
4 point -- or he doesn't even have to point, he  
5 can hold all of his fingers out, palm down at  
6 that spot on the board. That's all I'm  
7 looking for.

8 He doesn't have to put a mean  
9 face on or pretend he's holding a gun or -- or  
10 say anything scary or act out of control and  
11 crazy and aggressive and geeked up and pumped  
12 up, and all the things we've heard about him  
13 that morning. So I just disagree  
14 categorically with that description that  
15 that's what's going to happen here. We could  
16 have him put on a hoody, have him pull the  
17 hoody over his face, put his hands in the  
18 pockets, kind of crouch over so the jury could  
19 see what he would look like in that position,  
20 then he might look menacing. There's nothing  
21 like that here.

22 ATTORNEY CHERNIN: Well, the  
23 other thing that -- and I would add because I  
24 think I see which way the court is leaning,  
25 and I'm hoping you're not -- is that if you're

1 going to ask Mr. Wilber to do this right now,  
2 he has a restraining device on his arm which  
3 will be exposed to the jury, and I would ask  
4 that that item be removed if the court is  
5 inclined.

6 THE COURT: Why would that be  
7 exposed to the jury? He's got a shirt on, you  
8 had indicated it's the same thing he was  
9 wearing the other day when I asked you why you  
10 didn't bring the sweater to cover it up you  
11 said, it would be too warm in here, but  
12 besides it appears to be completely covered by  
13 his clothing.

14 ATTORNEY CHERNIN: Right, from  
15 this position. But if he's -- I mean --  
16 Danny, could you show her your arm. I mean,  
17 there's -- it's obvious that there's something  
18 on here.

19 THE COURT: Well, one of the ways  
20 you do that is to simply pull his -- excuse  
21 me?

22 THE DEFENDANT: I pull my thing  
23 here. My shirt here.

24 THE COURT: Thank you. I thought  
25 you were being disrespectful to the court

1           again. I get that impression from time to  
2           time when you sigh or make noises emanating  
3           from your -- from your vocal words,  
4           demonstrating to this court a certain level of  
5           disgust. It could just be me.

6                       THE DEFENDANT: I have nothing to  
7           say, Your Honor.

8                       THE COURT: I'm sorry?

9                       THE DEFENDANT: I have nothing to  
10          say, Your Honor.

11                      THE COURT: Well, you said it  
12          already. You already said it.

13                      Mr. Chernin, please advise him  
14          about his conduct in this court, because as I  
15          said the other day, I'm not going to have you  
16          folks mistake my kindness for weakness. I  
17          have been doing this as restrained as I can  
18          outside the presence of the jury, and given  
19          his outburst the other day, he's lucky he  
20          hasn't been charged with threatening a judge,  
21          that he hasn't been charged with disorderly  
22          conduct, that he hasn't been charged with  
23          contempt. And you know whereof I speak.

24                      ATTORNEY CHERNIN: Well, Judge --

25                      THE COURT: And I am not going to

1 continue to run my court with this gentleman,  
2 you know, being disrespectful to me from the  
3 minute he comes in the court till the minute  
4 he leaves. I'm not going to tolerate it and I  
5 don't have to, quite honestly. I don't have  
6 to. Tell me if I have to. I don't think I  
7 do. I don't think there's anything in the  
8 rules of judicial conduct that require a judge  
9 to be disrespected and do nothing about it.  
10 Tell me if I'm wrong. I'm not going to.  
11 Today's the end. You do it again, we are  
12 going to add additional restraints to you in  
13 front of the jury.

14 ATTORNEY CHERNIN: Well --

15 THE COURT: I'm done,  
16 Mr. Chernin.

17 ATTORNEY CHERNIN: I --

18 THE COURT: I'm going to have him  
19 go in the back again with you and you are  
20 going to spend some time with him, explaining  
21 to him the proper conduct in court. I am not  
22 going to sit here from 10:00 o'clock this  
23 morning until 6:00 o'clock tonight having the  
24 defendant show utter disregard and respect for  
25 this court. It ain't gonna happen. I'm not

1 going to enable that kind of disrespectful,  
2 inappropriate conduct in a court of law. It  
3 ain't gonna happen on my watch, period.

4 ATTORNEY CHERNIN: Judge, we're  
5 well aware of that fact. I'm not arguing with  
6 you.

7 THE COURT: He doesn't seem to  
8 get it, Mr. Chernin.

9 ATTORNEY CHERNIN: I will talk to  
10 him. I do believe that Mr. Wilber understands  
11 it and I know that he did not mean any  
12 disrespect.

13 THE COURT: Mr. Chernin --

14 ATTORNEY CHERNIN: Yes.

15 THE COURT: -- he doesn't mean  
16 any disrespect, then why do it?

17 ATTORNEY CHERNIN: He sighed,  
18 Your Honor. And what we will do is the  
19 prop -- and I know what he's sighing about --  
20 when we asked if we could cover up this side  
21 of his arm, the cufflink doesn't hold on that  
22 side. And, Judge, the only thing we could do  
23 is this, if you're going to rule that you're  
24 going to allow this demonstration and he's  
25 going to have to stick up his hand, all we ask



1 is that we do the best we can to try to cover  
2 the restraint that's on his arm. And that's  
3 what we're asking -- that's what I'm asking  
4 for now. You haven't ruled yet, so let me not  
5 jump ahead.

6 THE COURT: The court's going to  
7 take a ten-minute break. The defendant can go  
8 back in the holding cell and you can chat with  
9 him back there.

10 (Break taken.)

11 THE COURT: Recalling State of  
12 Wisconsin v. Danny Wilber, 04CF000609, first  
13 degree intentional homicide while armed with a  
14 dangerous weapon. Appearances please.

15 ATTORNEY GRIFFIN: Assistant DA  
16 Jim Griffin for the State with Detective Tom  
17 Casper of the Milwaukee Police Department.

18 ATTORNEY CHERNIN: Michael  
19 Chernin appearing on behalf of Danny Wilber.  
20 Danny Wilber is present in the courtroom.

21 THE COURT: The court has had an  
22 opportunity to read the relevant case law,  
23 I've heard the arguments of the parties and  
24 I'm actually going to deny the State's request  
25 for this demonstration. The court's denying

1       it for a couple of reasons. First of all,  
2       most of the -- and while this wasn't  
3       articulated in the way I would have liked by  
4       the defense, most of the cases that invoked  
5       demonstrative evidence are -- in fact go  
6       directly to identification. Identification is  
7       not an issue and hasn't been an issue at this  
8       point raised by the State.

9                       And in fact, the State has  
10       indicated that the evidentiary value, if any,  
11       of this demonstration, particularly if it's  
12       used by -- if the defendant's going to be the  
13       one being asked to do it, to me has very  
14       little, if minimal, value to the jury. And to  
15       the extent that it would have value, it is  
16       unduly confusing. It can create all sorts of  
17       other additional issues. Number one, we don't  
18       know where or what the position the defendant  
19       was in ostensibly when the shots went off.  
20       Secondly, we don't know what position the  
21       victim was in, whether he was standing or  
22       seated, whether he was front or back. We  
23       don't know any of those things at this point.

24                      We do know that the State's  
25       theory and some evidence consistent with the

1 State's theory has been presented. The  
2 State's theory that the only one in that  
3 kitchen tall enough to invoke any kind of a  
4 wound from an upward to a downward position is  
5 Danny Wilber, the defendant.

6 And I think, just as the State  
7 has correctly pointed out, common sense can  
8 indicate to the jury that one of the very  
9 distinct possibilities of a -- and there's  
10 nothing foreclosing the State from arguing  
11 this consistent with their theory in front of  
12 the jury, that one would -- that if in fact  
13 Danny Wilber is the only one, as the evidence  
14 points to, that was the tallest one in the  
15 kitchen, and if in fact as the doctor  
16 testified it came from an upward to a downward  
17 position, that is the trajectory of the -- of  
18 the bullet, the shot, consistent with the  
19 entrance and exit wounds, the State is free to  
20 argue the natural inferences of that in front  
21 of a jury, which is that it should have and  
22 could have and in fact did come from the  
23 defendant, who was the tallest one in that  
24 room. And his size is consistent with the  
25 trajectory of that bullet as described by

1 Doctor Jentzen in his testimony.

2                   There are in fact quite a few --  
3 so I don't see that my foreclosing the State  
4 from this demonstrative evidence, which is  
5 really supposed to be a clarification point  
6 for the jury, and I think it has minimal value  
7 in that regard, in fact, I think the State,  
8 even through its -- its demonstration as I  
9 understood it, and having the defendant just  
10 have his hand out in a -- in a direct line  
11 pointing at a predesignated point on a board  
12 that is ostensibly at a level of five foot  
13 eight, I don't know from what I'm seen thus  
14 far that that has any -- brings any clarity to  
15 the picture at all. Because there's only --  
16 the difference in terms of the -- the angle, I  
17 mean his arm, as far as jury is going to be  
18 seeing, and as far as I've seen, is almost  
19 straight out, maybe or perhaps a dip, but  
20 there's so many different ways that that could  
21 be manipulated in terms of did he drop his  
22 shoulder, did he -- was he on his tip toes,  
23 was he flatfooted, all of those kinds of  
24 things that the defense was trying to argue,  
25 saying that there's just so many variants

1       here, Judge, that it really doesn't have any  
2       evidentiary value. And to the extent that it  
3       does, the State already has evidence in on  
4       this point and this is just cumulative. And  
5       so for those reasons I agree.

6               The State is free to argue this  
7       point, that's their theory of the case, they  
8       have evidence in that already points to that  
9       and they can certainly make arguments to the  
10      jury on the inferences. The only caveat to  
11      this is that if in fact the defense puts in  
12      evidence that is in their case, or if in fact  
13      the defendant gets on the stand and starts  
14      to -- the issue of angles or other  
15      possibilities comes into play, then for  
16      rebuttal purposes the State has -- will have  
17      some leeway and the court will revisit the  
18      issue to determine whether or not it's  
19      appropriate for the State to be able to  
20      rehabilitate his case on this particular issue  
21      through such a demonstration in front of the  
22      jury.

23              But in its case in chief the  
24      court is not satisfied that it goes to  
25      identification, that's not a issue, and for

1       the purpose that it's being offered, I find  
2       that it has minimal evidentiary value and its  
3       prejudice outweighs that, and so I'm going to  
4       deny the State's request.

5                   ATTORNEY GRIFFIN:   Very quickly,  
6       Judge, can I have Mr. Wilber simply stand up  
7       and put the board with that mark on it next to  
8       him?

9                   THE COURT:   No.   You can have him  
10      stand up and for the jury to see what his  
11      height is, or for them to at least get a view  
12      of him as to what his size is from just  
13      standing.   They've had an opportunity  
14      obviously when they come in and out he's been  
15      standing, but if you would like to, as part of  
16      any demonstration to clarify his size, you can  
17      certainly have him stand.   But anything in  
18      connection with that board or pointing in your  
19      case in chief is going to be denied.

20                  ATTORNEY GRIFFIN:   And is the  
21      court foreclosing me from saying -- bringing  
22      in Mr. Chisholm and Mr. Molitor and having  
23      Mr. Chisholm point at Mr. Molitor's head?

24                  THE COURT:   No.

25                  ATTORNEY GRIFFIN:   Thank you.

1 THE COURT: All right. Let's  
2 have the State -- or let's have the jury  
3 brought in and let's -- let's bring the  
4 witness in. I just want to see if I recognize  
5 the witness.

6 No. No, I don't recognize her.  
7 I'm going to have you bring her all the way up  
8 to the witness stand.

9 DEPUTY: All rise for the jury.  
10 (Jury in box.)

11 THE COURT: Please be seated.  
12 I'm going to have you remain standing. I'm  
13 going to have you raise your right hand,  
14 ma'am, and you'll be sworn in by my clerk.

15 JILL NEUBECKER, called as a  
16 witness herein, having been first duly sworn,  
17 was examined and testified as follows.

18 THE CLERK: Please be seated.

19 THE COURT: I'm going to have you  
20 begin, ma'am, by stating your full name for  
21 the record, spelling your first and last  
22 name. I'm going to ask you to use the mike  
23 and to speak loudly and clearly into the  
24 microphone.

25 THE WITNESS: Jill, J-I-L-L,

1 Renee, R-E-N-E-E, Neubecker,  
2 N-E-U-B-E-C-K-E-R.

3 THE COURT: You may begin.

4 DIRECT EXAMINATION:

5 BY ATTORNEY GRIFFIN:

6 Q. Ma'am, how old are you?

7 A. 40.

8 Q. Did you just have some surgery last weekend?

9 A. Yes, I broke my ankle.

10 Q. You're you feel good enough at least to  
11 testify; correct?

12 A. I guess. They came and got me.

13 Q. Where do you live?

14 A. 2548A West Forest Home Avenue.

15 Q. And is that a single-family home, a duplex,  
16 what?

17 A. Duplex.

18 Q. Do you live in the upper or lower?

19 A. The upper.

20 Q. Who lives in the lower -- strike that.

21 Who used to live in the lower  
22 last January and February?

23 A. Wanda Tatum.

24 Q. Who else?

25 A. That's all I know of. And her daughter.



1 Q. Did you ever see any of her family members  
2 there?  
3 A. Just visiting.  
4 Q. Like who?  
5 A. Her mother, Sandra Wilber.  
6 Q. Anyone else?  
7 A. Her sister Antonia.  
8 Q. Did you ever see Danny Wilber?  
9 A. I seen Danny one time over there.  
10 Q. When was that?  
11 A. I can't recall.  
12 Q. Do you remember on February 1st -- that would  
13 have been a Sunday, February 1st of 2004, the  
14 police coming to your house right around noon?  
15 A. Yes, I do.  
16 Q. Do you know why they were there?  
17 A. They were looking for Danny as far as they  
18 told me.  
19 Q. And you told them about something unusual that  
20 had happened out there at your residence in  
21 the back yard just the night before, which  
22 would have been the night of January 31st;  
23 correct?  
24 A. I don't believe I told 'em anything unusual,  
25 no.

1 Q. Well, you told 'em something about an old  
2 barbecue that you had back there; right?  
3 A. One that I discarded, just got rid of, yes.  
4 Q. What do you mean, you just got rid of it?  
5 A. It wasn't used, it was just sitting out there,  
6 because I had one on my top porch.  
7 Q. Did you tell the police that someone had been  
8 using that grill for something the night of  
9 January 31st?  
10 A. A lot of people use that grill.  
11 Q. Right, I understand that, ma'am. But is that  
12 what you told them?  
13 A. Yeah.  
14 Q. And who are all the people that use that old  
15 grill of yours?  
16 A. Neighbors, friends.  
17 Q. And I'm going to show you some pictures. This  
18 one's marked Exhibit 42. Do you recognize  
19 that?  
20 A. Yes, I do.  
21 Q. What is it?  
22 A. It's my apartment.  
23 Q. That's the front of it?  
24 A. That's downstairs.  
25 Q. Exhibit 43, what do we see in that photo?

1 A. Back yard with a barbecue grill.

2 Q. Which grill? The one that you were using at

3 that time for cooking or the old one?

4 A. The old one.

5 Q. The one that you've now gotten rid of?

6 A. Yes.

7 Q. Exhibit 44, is that that same grill?

8 A. Yes.

9 Q. Only now it's open; correct?

10 A. Correct.

11 Q. And Exhibit 45, do you recognize that or not?

12 A. Not from the photo.

13 Q. It just looks like the inside of a grill?

14 A. Correct.

15 Q. You don't know if it's the same one?

16 A. I don't know.

17 Q. Okay. This would have been the middle of

18 winter?

19 A. Correct.

20 Q. And do you remember what you told the police

21 you thought someone was cooking in that grill

22 the night before?

23 A. I told the police I smelled something on fire,

24 I thought it was my house, 'cuz I smelled a

25 real strong smoke odor. That's all I told

1           them. I didn't know -- I didn't tell them I  
2           didn't know what was in the grill or anything,  
3           but I knew someone had used it.

4    Q.    Do you recall telling Officer Lazo that the  
5           night before you thought you smelled smoke,  
6           like somebody was burning clothes or  
7           something?

8    A.    No, I did not say that.

9    Q.    You didn't?

10   A.    No, I didn't. I just said I smelled smoke  
11          coming from the barbecue.

12   Q.    And you didn't tell the officer that it  
13          smelled like something, somebody was burning  
14          clothes or anything?

15   A.    No, I just said it smelled funny, it didn't  
16          smell like someone was cooking food.

17   Q.    It didn't?

18   A.    No, it didn't.

19   Q.    Did it smell to you like clothes?

20   A.    I don't know what clothes smell like being  
21          burned.

22   Q.    When you smelled that what did you do?

23   A.    I actually looked out my back porch because I  
24          thought my house was on fire.

25   Q.    And what did you see?

1 A. I just seen smoke. And I thought -- I thought  
2 the neighbor's house was on fire or there was  
3 a fire somewhere.

4 Q. And is that -- did you call the fire  
5 department right away?

6 A. No.

7 Q. What did you do?

8 A. I didn't do anything.

9 Q. Did you at some point notice, oh, it's just  
10 coming from the grill?

11 A. Yes, I just looked down and it was smoking.

12 Q. From the grill?

13 A. Correct.

14 Q. And did you later talk to your neighbors and  
15 find out who it was that had been using that?

16 A. No. They weren't home.

17 Q. Somebody was burning something other than food  
18 in your grill the night of --

19 A. It wasn't my grill.

20 Q. Your old grill?

21 A. Correct.

22 Q. Somebody was burning something other than food  
23 in there on January 31st?

24 A. I guess, yeah.

25 Q. And when the police came to your house, you

1           mentioned it to them?

2     A.    Correct.

3     Q.    Why?

4                    ATTORNEY CHERNIN:  Judge, this is  
5           the area that I indicated that I have a  
6           continuing --

7                    THE COURT:  Running objection.

8           So noted.

9                    ATTORNEY CHERNIN:  Thank you,  
10          Your Honor.

11                   THE WITNESS:  Continue?  What am  
12          I --

13    BY ATTORNEY GRIFFIN:

14    Q.    Sure.  Why -- why did you tell the police,  
15           hey, somebody's burning something back in my  
16           old grill back there?

17    A.    I didn't tell them someone was burning  
18           anything in my old grill.  They asked me if it  
19           was my grill and I told them no, it was not my  
20           grill.  They asked me if they could have  
21           permission to go look at a grill and I said  
22           you can take it, it's not mine, I don't care  
23           what you do with it, was my exact word.

24    Q.    Before that night, when was the last time that  
25           old grill of yours had been used?

1 A. I have no idea. That grill's been sitting out  
2 there for so long. We had one on our top  
3 porch, so I don't know when the last time the  
4 grill was used.

5 Q. Well, you said your neighbors used it, your  
6 friends used it --

7 A. It --

8 THE COURT: Wait until he  
9 finishes asking the question, then you can  
10 answer.

11 BY ATTORNEY GRIFFIN:

12 Q. You said your neighbors used it, your friends  
13 used it, all those kind of things, when --  
14 when -- when did they do all of those kinds of  
15 things?

16 A. I believe it was in the summertime, sir.

17 Q. So from the summertime to January 31st that  
18 you know of no one used that grill?

19 A. They could have used it. I don't know, I'm  
20 not home all the time.

21 Q. Where are you like at night usually?

22 A. I'm just anywhere, friend's house, I don't  
23 know. I don't keep a note of everywhere I go.

24 Q. So on January 31st though at night you were  
25 home?

1 A. Yes, I was.

2 Q. And you smelled something unusual?

3 A. Yes.

4 Q. And you went to the back to look?

5 A. Correct.

6 Q. And sure enough, there's smoke coming out of

7 the grill, but there's nobody there?

8 A. Right.

9 Q. And the next day when the police show up, you

10 mention to them something, or they simply

11 asked, hey, is that grill in the back yours?

12 A. They came up and asked me, was that my grill.

13 Q. And you said?

14 A. I said that that grill has been out there for

15 as long as we were getting rid of it, it was

16 just in the back yard. We have one on the top

17 porch, a new one.

18 Q. You didn't mention anything to the police at

19 all about just the night before somebody had

20 been burning something in there?

21 A. No, I did not.

22 Q. Do you know what the police found?

23 A. No, I don't.

24 Q. Were you familiar with your neighbors and

25 friends or anyone else burning things or using



1           that grill for anything other than grilling  
2           steaks, fish, hot dogs, brats?  
3    A.    No sir.  
4    Q.    So before January 31st at least, you know no  
5           one had used that grill to burn anything or to  
6           use it anything other than for food  
7           preparation?  
8    A.    Correct.  
9                           ATTORNEY GRIFFIN:  Nothing  
10          further.  
11                          THE COURT:  Cross.  
12                          CROSS EXAMINATION:  
13   BY ATTORNEY CHERNIN:  
14   Q.    So when you looked outside and saw smoke  
15          coming out of that old barbecue did you see  
16          any people around it?  
17   A.    No, I didn't, sir.  
18                          ATTORNEY CHERNIN:  I have no  
19          further questions.  
20                          THE COURT:  Any redirect?  
21                          ATTORNEY GRIFFIN:  No.  
22                          THE COURT:  You may step down.  
23                          THE WITNESS:  Thank you.  
24                          (Witness excused.)  
25                          ATTORNEY GRIFFIN:  Detective

1 Erwin's out there, Judge, he was there  
2 earlier.

3 THE COURT: They've asked for  
4 him.

5 Detective, raise your right hand  
6 and my clerk will swear you in.

7 JOSEPH ERWIN, called as a witness  
8 herein, having been first duly sworn, was  
9 examined and testified as follows.

10 THE CLERK: Please be seated.

11 THE COURT: Detective, I'm going  
12 to have you state your full name for the  
13 record, spelling your first and last name.

14 THE WITNESS: Joseph Erwin,  
15 J-O-S-E-P-H, E-R-W-I-N.

16 THE COURT: You may begin.

17 DIRECT EXAMINATION:

18 BY ATTORNEY GRIFFIN:

19 Q. Detective Erwin, I want to talk about February  
20 1st of 2004. Do you remember that day and  
21 that time?

22 A. Yes.

23 Q. It was about 11:30 p.m. that you went out to  
24 Ms. Neubecker's residence there on 2548 West  
25 Forest Home; right?

1 A. Yes.

2 Q. Why did you go there?

3 A. I had been summoned there by some warrant  
4 squad -- uniform warrant squad officers who  
5 stated that they had some information  
6 regarding some burn material, and I had been  
7 checking for the suspect in this case, Danny  
8 Wilber.

9 Q. I'm going to show you some photographs marked  
10 42 through 45, 42, 43, 44 and 45. Can you go  
11 through them one by one and tell the jury what  
12 we see in each of these pictures.

13 ATTORNEY CHERNIN: I'm sorry, can  
14 I see 43, because I don't recall that one. I  
15 saw 42 and 44 and 45. I'm sorry. Okay.

16 (Discussion off the record.)

17 ATTORNEY CHERNIN: Okay. Got it.

18 THE COURT: Go ahead.

19 BY ATTORNEY GRIFFIN:

20 Q. What do we see in each of those photographs?

21 A. Exhibit 42 shows a photograph of the front  
22 entrance to that address of 2548 West Forest  
23 Home. Exhibit 43 is a photograph of a Weber  
24 type grill that was at the rear of that  
25 address in the rear yard. Exhibit 44 is a

1 photo of that Weber grill with the lid up,  
2 showing material inside, giving an overall of  
3 the whole grill. And Exhibit 45 is basically  
4 a close up of material underneath the grill  
5 portion. It's a -- shows burn material that's  
6 inside the grill itself.

7 Q. When you say burn material, were you able to  
8 make out what any of that material was?

9 A. Most of it I could not, but through sifting  
10 through it I found the soles of a -- what  
11 appeared to be a a pair of shoes.

12 Q. Anything else?

13 A. I believe there was a cigarette butt in there  
14 as well.

15 Q. Was that a Newport?

16 A. Yes.

17 Q. I'm going to show you, Detective, what's been  
18 marked as Exhibit Numbers 46 and 47. Do you  
19 know what these are?

20 A. Yes. These are cans that I use to package the  
21 soles of the shoes that I found, which I  
22 ultimately had recovered from the grill.

23 ATTORNEY CHERNIN: Judge, just  
24 again for the record, the court is noting  
25 my --

1 THE COURT: I have a running  
2 objection, Mr. Chernin. That will do.

3 ATTORNEY CHERNIN: Okay. Thank  
4 you.

5 THE COURT: We have a running  
6 objection, Mr. Chernin. If you have anything  
7 else, you need to do it at side bar.

8 ATTORNEY CHERNIN: Your Honor,  
9 just --

10 THE COURT: Do you have anything  
11 else? Let's do it at side bar.

12 ATTORNEY CHERNIN: Okay.

13 (Side bar.)

14 THE COURT: You may continue.

15 ATTORNEY GRIFFIN: Judge, with  
16 permission I'm going to ask Detective Erwin to  
17 bring the cans over by the desk and open  
18 them.

19 THE COURT: He may.

20 BY ATTORNEY GRIFFIN:

21 Q. I'm going to ask you, Detective Erwin, to  
22 return now to the witness stand with the cans  
23 now that they're open. Can you just show to  
24 the jury what's inside those cans. Pull them  
25 out. Are you able to know what company made

1           those soles?

2    A.    Based on the markings on the bottom of this  
3           sole of the shoe, it has the name Timberland  
4           on them, which is visible on both soles.

5    Q.    And those were found in the grill on February  
6           1st of 2004?

7    A.    Yes.

8    Q.    The grill that's in those photographs at 2548  
9           West Forest Home?

10   A.    Yes.

11   Q.    Besides those two shoe soles and the  
12           partially -- the cigarette butt from the  
13           Newport cigarette, did you find anything else  
14           that you could identify inside that grill  
15           besides ash?

16   A.    No.

17   Q.    Were there charcoal briquettes and things we  
18           see in there?

19   A.    Yes.

20   Q.    Did you talk to Miss Neubecker?

21   A.    Yes, I did.

22   Q.    And what did she tell you about that grill?

23   A.    She told me that the grill at one time did  
24           belong to her, but that she had purchased a  
25           new grill and had placed that grill in the

1 back yard. I did request her permission,  
2 determining that she was the owner of the  
3 grill, if I could look in it, and she did give  
4 me that permission.

5 Q. Why did you want her permission to look in  
6 that grill?

7 A. Just to make sure that it didn't belong to  
8 anybody else and make sure that I had proper  
9 consent, in case I did find anything of  
10 evidentiary value in there.

11 Q. And how was it that that grill so to speak  
12 came to your attention in the first place?  
13 Why did you want to look in there?

14 A. The officers -- the uniform officers that I  
15 had gone to meet had informed me that they had  
16 received --

17 ATTORNEY CHERNIN: Objection.  
18 Hearsay.

19 ATTORNEY GRIFFIN: Let me  
20 rephrase.

21 THE COURT: Rephrase.

22 BY ATTORNEY GRIFFIN:

23 Q. You knew, did you not, at first that  
24 Ms. Neubecker didn't want her name used in any  
25 of this; right?

1 A. Yes.

2 ATTORNEY CHERNIN: Objection.

3 Hearsay again.

4 THE COURT: Overruled. I'll

5 allow it.

6 BY ATTORNEY GRIFFIN:

7 Q. Was that part of the reason you wanted to get  
8 her permission for the grill?

9 A. Yes.

10 Q. Did Ms. Neubecker tell you when she thought  
11 things had been getting burned in that grill?

12 ATTORNEY CHERNIN: Objection.

13 Hearsay.

14 THE COURT: Overruled. I'll

15 allow it.

16 A. No.

17 BY ATTORNEY GRIFFIN:

18 Q. She told that to someone else?

19 A. Yes.

20 Q. A different officer?

21 A. Yes.

22 ATTORNEY GRIFFIN: Nothing  
23 further.

24 THE COURT: Cross.

25 CROSS EXAMINATION:



1 BY ATTORNEY CHERNIN:

2 Q. Detective Erwin, did you or anyone else to  
3 your knowledge submit the Newport cigarette  
4 for any sort of testing? Scientific testing?

5 A. I don't believe I did, but I don't know if it  
6 was done by any other officers or any other  
7 detectives.

8 Q. And the same with the shoes?

9 A. I did submit the shoes to the Wisconsin  
10 Regional Crime Lab in attempt to determine if  
11 there was any DNA evidence or any other  
12 evidence that they could find on the shoes or  
13 soles of the shoes.

14 Q. And what, if anything, did you learn as that  
15 part of your investigation?

16 A. It was my understanding that the crime lab --  
17 or our Wisconsin crime lab does not deal with  
18 identification of shoes or shoe prints, and we  
19 were told that -- to seek other sources for  
20 that information.

21 Q. So you have no information as to who those  
22 shoes belong to?

23 A. No.

24 ATTORNEY CHERNIN: Thank you.

25 THE COURT: Any redirect?

1 ATTORNEY GRIFFIN: No.

2 THE COURT: Detective, you may

3 step down.

4 (Witness excused.)

5 ATTORNEY GRIFFIN: Call Detective

6 Louis Johnson.

7 THE COURT: Detective Johnson,

8 I'm going to have you come on up to the

9 witness stand. I'm going to have you remain

10 standing, raise your right hand and my clerk

11 will swear you in.

12 LOUIS JOHNSON, called as a

13 witness herein, having been first duly sworn,

14 was examined and testified as follows.

15 THE CLERK: Please be seated.

16 THE COURT: Detective, begin by

17 stating your full name for the record,

18 spelling your first and last name if you

19 would, sir.

20 THE WITNESS: Louis Johnson.

21 First name spelled L-O-U-I-S, last name

22 spelled J-O-H-N-S-O-N.

23 THE COURT: You may begin.

24 DIRECT EXAMINATION:

25 BY ATTORNEY GRIFFIN:

1 Q. Sir, what do you do for a living?

2 A. I'm a City of Milwaukee police detective.

3 Q. How long have you been on the force, how long

4 have you been a detective?

5 A. I've been on the force since January 25th of

6 1988, I've been a detective since July 3rd of

7 '94, which is going on 11 years.

8 Q. On February 2nd of 2004, along with your

9 partner Randy Olson, did you interview a woman

10 by the name of Antonia West?

11 A. Yes.

12 Q. Did she identify herself to you as Danny

13 Wilber's sister?

14 A. Yes, she did.

15 Q. I'm going to show you, Detective, what's been

16 marked as Exhibit 27. Do you recognize that?

17 A. Yes.

18 Q. What is it?

19 A. It's a Milwaukee police report, PA45A and 45B,

20 handwritten report made out by myself.

21 Q. That particular report, the vast majority of

22 it, with the exception of maybe Ms. West's

23 signatures and initials, was written by who?

24 A. That was written by myself.

25 Q. You've read it in preparation for testimony

1           here today; correct?

2    A.    Yes.

3    Q.    Did you ever read that statement to Ms. West?

4    A.    Yes, I did.

5    Q.    When?

6    A.    Directly after we had went over the interview  
7           and after handwriting it in her presence.

8    Q.    In your mind is it a fair and accurate  
9           recitation and summary of what Ms. West told  
10          you about the events of Danny -- excuse me --  
11          David Diaz's death on January 31st of 2004?

12   A.    Yes, it is.

13   Q.    I want to turn your attention first to page 1  
14          of 8.  There is an area there where it asks  
15          father, mother, brother, sister, things like  
16          that; correct?

17   A.    Yes.

18   Q.    And on the line where it says brother, it says  
19          Wilber Danny L, black male, 25 years of age  
20          2548 West Forest Home Avenue, no phone.  Do  
21          you see where that is?

22   A.    Yes, I do.

23   Q.    Where did you get that information from?

24   A.    I got that information from Antonia West.

25   Q.    Ms. West told you that?

1 A. Yes.

2 Q. Detective, I want to be clear about this. Did  
3 you make that up?

4 A. No, I did not.

5 Q. The part about her father being up north, her  
6 mother at 1910 South 26th Street, with a phone  
7 number, her sister Wanda Tatum at 2548 West  
8 Forest Home with no phone, where did all of  
9 that information come from?

10 A. I received all of that from Antonia West.

11 ATTORNEY GRIFFIN: Could I have  
12 one second, Judge.

13 THE COURT: You may.

14 BY ATTORNEY GRIFFIN:

15 Q. There's more information, her boyfriend, that  
16 she doesn't work, how far she went in school,  
17 that she's never been arrested, how long she's  
18 lived in Milwaukee. Is there anything on this  
19 page that didn't come from Antonia West, and  
20 if so, tell us which part.

21 A. Everything that's on this -- page 1 of this  
22 report that we're referring to all came from  
23 Antonia West.

24 Q. Including the part about, can read and write?

25 A. That's correct.

1 Q. What were you asking her that for?

2 A. I always -- 'cuz I want to know who and the  
3 person that I'm interviewing if they  
4 understand exactly what's being said, be it  
5 verbally, in writing, and if they -- 'cuz if  
6 they -- during the conclusion of this and  
7 during the course of this there may be some  
8 times that she would have to read and  
9 understand my handwriting, at the conclusion,  
10 just so when we're going through there if  
11 she -- I'm well aware that she's of able mind  
12 and knows her -- what she -- what can be read  
13 and what can be -- if she can read and if she  
14 can write.

15 Q. At any time when you were with Ms. West that  
16 day did you have her read anything?

17 A. Yes.

18 Q. How or what -- I mean, how did that come  
19 about?

20 A. At the -- at the conclusion of going over  
21 everything after she had already informed me  
22 that she can read and write and getting her  
23 medical condition and all that sort of stuff,  
24 that she -- I had her read a couple of the  
25 lines at the beginning of it and at the

1 conclusion, as well as verbatim as I'm reading  
2 it, I'm next to her and she's reading along  
3 with me.

4 Q. But you're the one at that point that's  
5 reading it out loud to her?

6 A. That's correct.

7 Q. Why would you read it out loud to her? I  
8 mean, isn't this your chance at the end to  
9 sneak something in on her and sneak the juicy  
10 part that you want in that she won't give you,  
11 so to speak?

12 A. No. I want to make sure that when I read it  
13 out loud to 'em that if there's something in  
14 there that they didn't say, or they didn't  
15 think was said, was meant the way they said  
16 it, they -- that we would strike that, we  
17 would cross it out or make a correction.

18 Q. At the bottom of the page, for example, has  
19 asthma, no other medical or emotional  
20 problems, not under the influence of alcohol  
21 or drugs, what's that all about?

22 A. Basically I want to make sure that her of sane  
23 mind and not under the influence of any drugs,  
24 alcohol or anything like that that would mess  
25 up their train of thought or what -- so they

1 understand what's being said and what's  
2 happening during the course of this interview.

3 Q. Ms. West was not in your mind a suspect;  
4 right?

5 A. No.

6 Q. Although it's fair to say when you interviewed  
7 her at that point her brother Danny Wilber  
8 was?

9 A. Yes, he was.

10 Q. And is there any particular reason that you  
11 did not write down in that exhibit -- and I  
12 forget the number, 27?

13 A. 27, yes.

14 Q. Is there any reason that you did not write  
15 down in here, Ms. West told me that she saw  
16 her brother Danny Wilber shoot the victim?  
17 How come you didn't write that down in here?

18 A. 'Cuz -- 'cuz she didn't tell me that.

19 Q. Well, but when she -- she was just initialing  
20 anything you wrote in the page without reading  
21 it or you reading it to her; isn't that right?

22 A. No, she only initialed -- she initialed each  
23 paragraph and each page of the complete  
24 report, as well as her signature at the end  
25 should be, of the information that I read back



1 to her as she read along, and that she was  
2 agreeing to what was in the content of this  
3 report during the course of this interview.

4 Q. On what's marked page 2 of 8, about a third or  
5 so of the way down there's a signature,  
6 Antonia West, at the bottom of each page I see  
7 the initials AW, and then again at the end of  
8 the document I see a couple of Antonia's West  
9 initials and signatures. Can you explain to  
10 the jury what all of those signatures and  
11 initials are at the end of each paragraph,  
12 page, all of that?

13 A. I just wanted -- at the end of each paragraph  
14 basically I wanted to be sure in my mind as  
15 well as the person that's being interviewed,  
16 that the content of what was being read to  
17 them, and what's being said here is that they  
18 are agreeing to that's what they told me. And  
19 that's why I have them do it after every  
20 paragraph, either initial it or -- or their  
21 signature as well as each page.

22 Q. In fact, where a paragraph ends in the middle  
23 of a line, did you have her initial it to show  
24 that you didn't go in and add anything after  
25 that?

1 A. That's correct.

2 Q. For example, on page 3 of 8, down in the last  
3 couple of lines there's -- in the -- in the  
4 first to last line there's three different  
5 cross outs, and it looks like next to each one  
6 of the initials AW, then in the last line  
7 there's another cross out with the initials  
8 AW. What's going on there?

9 A. During the course of me hand writing this in  
10 her presence and going over it, I had some  
11 incorrect information written in and it was  
12 corrected by her, that being Antonia West.  
13 And I crossed out and put in the correct  
14 information and she initialed that I was  
15 putting in the correct information because it  
16 wasn't correct.

17 Q. So in other words, as opposed to just crossing  
18 something out yourself and changing it, you  
19 have her recognize and acknowledge that the  
20 change was made with her knowledge?

21 A. Yes.

22 Q. With her approval?

23 A. Yes.

24 Q. What was she like with you? I mean, what was  
25 the demeanor? Was she disrespectful to you?

1           Swearing at you? Rude?

2    A.    She was fairly cooperative. She was not  
3           rude. She was evasive at times. Other than  
4           that she was not a problem during the course  
5           of this interview.

6    Q.    How long did the interview last? In other  
7           words, what time did it start? What time did  
8           it end?

9    A.    We started at 11:30 a.m. and concluded it at  
10          4:01 p.m. on the 2nd of February, '04.

11   Q.    I want to direct your attention, Detective, to  
12          page 8 of 8, the very last paragraph. Do you  
13          want to read that paragraph just to refresh  
14          your memory real quick? Okay.

15   A.    Yes.

16   Q.    I'm going to show you a picture, a photograph  
17          marked Exhibit Number 10 of a woman. Did you  
18          show at the very end there that picture to  
19          Ms. West?

20   A.    Yes.

21   Q.    That's the picture of Lea Franceschetti --

22   A.    Yes.

23   Q.    -- which you talk about in that last  
24          paragraph. Then it reads, when the gunshot  
25          went off she may have been in shock and may

1        have said, quote, you shot him, get out of  
2        here, closed quote, but would not know who she  
3        would have been talking to. I want to direct  
4        your attention first to the part in quotes,  
5        you shot him, get out of here. Who's -- why  
6        is that in quotes?

7    A.    Because that's exactly the way she -- she --  
8        she had stated it to me.

9    Q.    She did not tell you that she said that, she  
10       specifically told you she may have said that?

11   A.    She said she may have said that.

12   Q.    I'm assuming at some point you confronted her  
13       then with information you had that -- that  
14       somebody was saying she said that; right?

15   A.    That's correct.

16   Q.    She had not mentioned that to you in the  
17       initial part of the interview though; right?

18   A.    That's correct.

19   Q.    Did you make that up?

20   A.    No.

21   Q.    Did you add that in there on your own without  
22       ever reading it to her, without ever telling  
23       her you were putting it in there and then get  
24       her to initial and sign this document?

25   A.    No, I did not.

1 Q. And at any time in the interview with Miss  
2 Antonia West, did she tell you that at the  
3 time the gunshot went off Danny Wilber was in  
4 her line of sight?

5 A. No. He was behind. She said she had her back  
6 to him.

7 Q. That she was headed off to the bathroom;  
8 right?

9 A. That's correct.

10 Q. Did she ever tell you after the shot she saw  
11 Danny Wilber pat himself down to see if he was  
12 shot?

13 A. No.

14 Q. Did she ever say anything like that at all in  
15 the almost five hours that you were with her?

16 A. No, she did not.

17 Q. Were you not in fact, Detective, leaving all  
18 the things out that maybe made Danny Wilber  
19 not the shooter and putting anything in that  
20 you could that would make it look like he  
21 was? Isn't that what you were doing?

22 A. No.

23 Q. Were weren't you twisting her words and  
24 forcing her to say things that she didn't want  
25 to say and scribbling yet other things down on

1 the paper and getting her to initial it?

2 A. No.

3 Q. Was there anything like that at all, sir?

4 A. No.

5 ATTORNEY GRIFFIN: Nothing

6 further.

7 THE COURT: Cross.

8 CROSS EXAMINATION:

9 BY ATTORNEY CHERNIN:

10 Q. Detective Johnson, when you approach a person  
11 that you're going to question, you do it based  
12 upon some training and experience that you've  
13 developed in conducting an interview; is that  
14 true?

15 A. Yes.

16 Q. And you've been conducting interviews, many,  
17 many, many interviews, we could probably try  
18 to count them, but we can't since at least the  
19 time you became a detective on July 3rd of  
20 1994; isn't that correct?

21 A. Yes.

22 Q. And you did some field interviews and  
23 developed some techniques when you were  
24 working as a patrol officer between 1988 and  
25 1994 when you became a detective; right?

1 A. That's correct..

2 Q. And you have a college degree; is that

3 correct?

4 A. Yes.

5 Q. And what's that degree in?

6 A. Bachelor's in criminal justice, minor in

7 psychology, University of Minnesota.

8 Q. And you use what you learn in your criminal

9 justice and psychology courses in order to

10 conduct an interview to get people to tell you

11 and -- tell you information; isn't that fair

12 to say?

13 A. Yes, I use that as well as my experience and

14 training. Yes.

15 Q. And isn't it true that you've also taken some

16 seminars in conducting interviews?

17 A. Yes.

18 Q. And those are in-training or in-service

19 training; is that correct?

20 A. In-service, non-service -- out-of-service type

21 seminars, yes.

22 Q. And one of the reasons that you've taken those

23 seminars and why you've conducted so many

24 interviews is because you're very good at

25 conducting interviews; correct? Is that fair

1 to say? Do you think you're good at  
2 conducting interviews?

3 A. Yes, I do.

4 Q. Okay. Now, you've cracked some very difficult  
5 cases by getting people to make admissions  
6 that one wouldn't ordinarily expect; isn't  
7 that fair to say?

8 A. I've interviewed numerous people and have  
9 gotten confessions. I've interviewed  
10 witnesses and gotten the truth out of people,  
11 yes.

12 Q. Surprising that some people would confess to  
13 some of the things that they have; isn't that  
14 true? I mean, telling on themselves  
15 completely; right?

16 A. Yes.

17 Q. Now, you knew from your interview with Antonia  
18 West that she was a person of limited  
19 education; isn't that fair to say?

20 A. Yes.

21 Q. And, for example, on page 8 of your interview  
22 when she says that she may have said  
23 something, did she explain to you what she  
24 meant by may have said something, that it's  
25 possible, or that she said it? What did that



1 mean? Is it just a possibility, a  
2 probability, a likelihood that she said it?  
3 What -- what -- what did she define that as  
4 meaning?

5 A. Basically she was saying to me she possibly  
6 could have said that, but can't recall  
7 exactly, but it wasn't like she didn't say  
8 it. And she could have very easily have said  
9 that, yes.

10 Q. Now, you'd have to agree that this is a rather  
11 old fashioned, old school way of conducting  
12 interviews, by having police officers write  
13 down what happens, as opposed to using  
14 audiotape or videotape; isn't that true?

15 A. We don't -- do not use those, so that's not  
16 part of our -- our process that we do in our  
17 interviews.

18 Q. It's not part of your practice; right?

19 A. Correct.

20 Q. But when you've taken courses and dealt with  
21 other jurisdictions, you know that other  
22 jurisdictions do use audiotape and videotape  
23 for the purposes of interviewing witnesses and  
24 suspects; isn't that true?

25 A. Yes.

1 Q. But the City of Milwaukee Police Department  
2 chooses not to do that; right?

3 A. That's correct.

4 Q. Now, in the whole time in Exhibit 8 that you  
5 questioned Antonia West, did she ever indicate  
6 or say that she saw or observed her brother  
7 standing behind David Diaz?

8 A. If I recall she -- she stated that he was one  
9 of the -- the victim, David Diaz, was one of  
10 the males that was standing in front of her  
11 brother attempting to calm him down.

12 Q. Is that -- can you look at your report and  
13 tell us where you see that language.

14 Let's just save time. It's on  
15 page 8 of 8; correct?

16 A. Yes.

17 Q. And it's right above where she initials that  
18 second paragraph?

19 A. Correct.

20 Q. And the language that she uses was what, sir,  
21 that you recorded?

22 A. You want me to read it, I'll read that  
23 paragraph.

24 Q. Do you recall exactly what she said?

25 A. Yes.

1 Q. What did she say?

2 A. That the victim was one of the guys that was  
3 standing in front, I mean, they're trying to  
4 calm her brother down. It's the same person  
5 she saw later that was laying there on his  
6 stomach shot.

7 Q. Dead?

8 A. Dead. Correct.

9 Q. Sorry, I didn't want to interrupt you, but I  
10 thought where you were going.

11 So in what she's communicating to  
12 you, it's that David Diaz was one of the  
13 people in front of her brother, not -- and her  
14 brother was not behind that individual;  
15 correct?

16 A. All I recall is that she said he was one of  
17 the ones standing in front of him attempting  
18 to calm him down.

19 Q. Okay. Again, she never says that Danny was  
20 behind David Diaz, you never recorded anything  
21 like that?

22 A. I never recorded that, no.

23 Q. And from what you know that's not the case,  
24 correct, that Danny Wilber was not behind  
25 David Diaz, according to the witnesses;

1 correct?

2 ATTORNEY GRIFFIN: Well, I

3 object. That -- that's not true.

4 ATTORNEY CHERNIN: Okay. Let's  
5 hit the other witnesses that you interviewed  
6 then.

7 THE COURT: The objection is  
8 sustained.

9 ATTORNEY CHERNIN: I'll withdraw  
10 that question.

11 BY ATTORNEY CHERNIN:

12 Q. You interviewed Antonia West after you  
13 interviewed a person named Richard Torres;  
14 isn't that true?

15 A. Yes, we did. Myself and I believe my partner  
16 at the time, Detective Randy Olson, may have,  
17 yeah, interviewed Mr. Torres. Correct.

18 Q. And so at the time do you recall how long your  
19 interview took place with Mr. Torres?

20 A. No, I would have to look at the reports and  
21 see exactly what time that was.

22 ATTORNEY GRIFFIN: Judge, may I  
23 see you on the side for a minute.

24 (Side bar.)

25 THE COURT: Objection is

1           sustained.

2   BY ATTORNEY CHERNIN:

3   Q.   You had met an individual by the name of  
4       Richard Torres prior to your interview of  
5       Antonia West; isn't that true?

6   A.   I believe so, yes.

7   Q.   Now, you attempted -- if I -- and correct me  
8       if I'm wrong -- when you're engaged in this  
9       interview process is it your practice to ask  
10      questions of an individual?

11   A.   Basically it's my nature -- basically I inform  
12      them what the nature of the investigation is.  
13      I let them know their whereabouts, that they  
14      are possible witness, I have information that  
15      they were present when this occurred, and in  
16      their own words if they could kind of tell me  
17      what actually happened. And in the course of  
18      them telling me that, when there were some  
19      information that was not clear to me, based on  
20      what they were saying, I would interject and  
21      ask them, wait, stop there, can -- now where  
22      were you at, you know, then I would interject  
23      questions during that.

24                   I didn't -- I don't just come out  
25      and run off questions. I let them tell me in

1           their own words what's going on, what  
2           happened, why -- why they were there, where  
3           they were coming from, so on, so forth.

4    Q.    Okay.  Now, Mr. Griffin asked you if Antonia  
5           West ever told you that she saw or observed  
6           Danny Wilber patting himself down, and I  
7           assume that that means after the shot was  
8           fired.  Do you recall him asking you that  
9           question?

10   A.    Yes, I do.

11   Q.    And you said that she did not tell you that;  
12           isn't that correct?

13   A.    Correct.

14   Q.    Did you ever ask her if she saw or observed  
15           Danny Wilber patting himself down after the  
16           shot was fired?

17   A.    I believe we talked about things of what her  
18           brother had done, and what had occurred after  
19           he -- after the shot went off, and she gave me  
20           indication of what that was.

21   Q.    Now, and in your report you don't indicate  
22           that she said that she observed Danny patting  
23           himself down; correct?

24   A.    Correct.

25   Q.    But again, you never asked her whether she saw

1 or observed him patting himself down; correct?

2 A. No, we talked about everything that could have  
3 possibly happened and what had occurred, and  
4 we went over things, as you see from a five-  
5 hour interview it was pretty -- pretty  
6 detailed and we go into a lot of information.  
7 She did not ever say at any time that her  
8 brother was patting himself down. Did we  
9 interject and talk about that? We did go into  
10 that, a little of everything, throughout the  
11 course of the interview.

12 Q. As part of your interview, you never showed  
13 her a diagram; did you?

14 A. No, I did not.

15 Q. And in the course of your interview you never  
16 developed any information -- so this is  
17 clear -- you never developed any information  
18 from her at the time of the shooting that  
19 Danny Wilber was behind David Diaz?

20 A. Her statement was that he -- her brother was  
21 behind her and she was headed to the restroom,  
22 that was her statement of where he was. And  
23 that she last saw her brother Danny, and the  
24 victim was in front of her -- in front of him  
25 attempting to calm him down. Nothing about

1           being behind that I recall.

2   Q.   Okay.  Now, at the time of the interview, your  
3       interview took place on February 1st of 2004;  
4       is that correct?  Or was it 2002?  I'm sorry.  
5       I apologize, wait a minute.  One moment.

6                       Your interview took place on  
7       February 2nd -- I'm sorry -- of 2004; isn't  
8       that correct?

9   A.   That's correct.

10  Q.   Now, at that time that you conducted your  
11       interview of Antonia West, had you seen the  
12       autopsy report that was prepared on February  
13       18th of 2004, or would that have been  
14       impossible?

15  A.   February 18th?

16  Q.   Yes.  You couldn't have seen the autopsy that  
17       prepared on February 18th of 2004 on February  
18       2nd of 2004 because the autopsy report had not  
19       been prepared yet; correct?

20  A.   I'm not sure where what you're asking.  I  
21       mean, you're asking me three questions now.

22  Q.   Do you know -- let me withdraw that question  
23       and reask it.

24                       Do you know when the autopsy  
25       report was prepared?



1 A. No, not without looking at the individual file  
2 or seeing when it was. No, I do not.

3 Q. Have you seen Exhibit 32 before?

4 A. I don't recall reviewing this at any time, no.

5 Q. Okay. Is an autopsy report something that you  
6 might review in the course of engaging in the  
7 investigation of a homicide?

8 A. Yes, at times.

9 Q. And are you familiar with -- well, I'll save  
10 that. I withdraw the question.

11 Well, let me ask this then. Do  
12 you know that the autopsy report says that the  
13 shot was fired from back to front?

14 A. I don't -- I don't have no recollection of  
15 what it would have said, other than what's  
16 based in possibly on the report, so there's  
17 many reports that go through on a daily basis.

18 THE COURT: Did you at any time  
19 read the autopsy report?

20 THE WITNESS: No, I didn't.

21 THE COURT: All right. So --

22 ATTORNEY CHERNIN: Thank you, no  
23 further questions.

24 ATTORNEY Griffin: May I, Judge?

25 THE COURT: You may.

1 REDIRECT EXAMINATION:

2 BY ATTORNEY GRIFFIN:

3 Q. I want to refer your attention to page 6 of  
4 8. That is the part that you wrote, where as  
5 she referred to, everything started getting  
6 crazy; right? At the third line down?

7 A. Yes.

8 Q. Okay. In other words, now we're into sort of  
9 the more heart of it, meaning the -- the few  
10 moments that actually matter in all of this,  
11 which are the moments leading up to the  
12 shooting; correct?

13 A. Yes.

14 ATTORNEY CHERNIN: Your Honor,  
15 objection. Basis 90 -- outside the scope of  
16 cross or -- yes, outside the scope of cross.

17 THE COURT: Overruled.

18 BY ATTORNEY GRIFFIN:

19 Q. There is a part in there about the chain  
20 snatching and people trying to -- her trying  
21 to calm Danny Wilber down; right?

22 A. Yes.

23 Q. Okay. In that particular paragraph after  
24 she -- you wrote, you know, he, Danny kept on  
25 talking loud. West states she then just

1 walked away from Danny towards the bathroom  
2 door and at least three Hispanic males  
3 approached Danny to talk with him. Is that  
4 what she told you?

5 A. Yes.

6 Q. Did you make that up?

7 A. No, I did not.

8 Q. Did you invent it?

9 A. No.

10 Q. Did you embellish it in any way?

11 A. No.

12 Q. Did she deny seeing Danny choke or punch  
13 anyone?

14 A. Yes, she did.

15 Q. And she was very upset at Danny now because  
16 he, Danny, wouldn't listen to her?

17 A. Yes, that's correct.

18 Q. Now, the next paragraph is actually sort of  
19 the moment of the gunshot; right?

20 A. Yes.

21 Q. And I'm going ask you to read that paragraph  
22 to the jury.

23 A. West states she hears one gunshot go off in  
24 the area directly behind her where her brother  
25 Danny and the Hispanic males were talking in

1 the kitchen. West states she then ducks her  
2 head down and then looked back up where she  
3 thought the gunshot came from and everyone was  
4 running out of the front door. West denies  
5 seeing anyone with a gun and now doesn't even  
6 see her brother Danny. Period. West states  
7 she then runs past the victim who's lying on  
8 his stomach in the kitchen near a wall.  
9 Period. West denies seeing her brother Danny  
10 or his friends once she gets outside. West  
11 states she then runs up to Jamie's white four-  
12 door car and Jamie and Lea were inside the car  
13 warming it up. West states both Jamie, white  
14 female, 20 years of age, blond and brown  
15 streaks in her hair, and Jamie's friend Lea,  
16 white female, twenties, brown hair, were both  
17 in the party but had left before the shooting  
18 happened.

19 Q. In that particular part she is telling you  
20 that in the moments before the shooting and in  
21 the moments after the shooting she didn't even  
22 see her brother?

23 ATTORNEY CHERNIN: Objection.

24 THE COURT: Sustained.

25 Rephrase.

1 BY ATTORNEY GRIFFIN:

2 Q. What did Ms. West tell you about seeing her  
3 brother in the moments up to and after the  
4 shooting?

5 A. She didn't see him.

6 Q. What did she tell you about what the Hispanic  
7 males who had approached him to calm him down,  
8 about where they were in the moments just  
9 before and after the shooting?

10 A. The victim, which was one of the persons  
11 there, was laying in front -- I'm sorry, I  
12 gotta go back and rephrase that. If you can  
13 do your question again please.

14 Q. Sure. In other words, Miss West sees three  
15 Hispanic males approaching Danny; right?

16 A. Yes.

17 Q. And what did -- did she tell you she watched  
18 them do?

19 A. She -- she didn't see them do anything other  
20 than go up to her brother and she -- she  
21 couldn't see 'em. She didn't see 'em at all.

22 Q. Where did the gunshot come from, according to  
23 what she heard?

24 A. From behind her.

25 Q. Which was where?

1 A. Which from the -- where her brother was. The  
2 area --

3 Q. With the three Hispanic males?

4 A. Correct.

5 Q. Did she ever tell you that she was looking at  
6 her brother and those Hispanic males when the  
7 shot went off?

8 A. No, she was not.

9 Q. Did she ever tell you that she ever saw her  
10 brother Danny again after the shooting?

11 A. No.

12 Q. Did she ever tell you the next day she saw her  
13 brother?

14 A. No.

15 Q. Between the moments before the shooting when  
16 she turned her back and in the time you  
17 interviewed her on February 2nd, how many  
18 times had she seen her brother Danny?

19 A. She didn't see him anymore.

20 Q. At all?

21 A. At all.

22 ATTORNEY GRIFFIN: Nothing  
23 further.

24 THE COURT: Recross.

25 ATTORNEY CHERNIN: None.

1 THE COURT: Detective, you may  
2 step down.

3 THE WITNESS: Thank you.

4 THE COURT: I'm going to ask you  
5 to tender all of those reports and pictures  
6 back to my clerk as you pass by.

7 THE WITNESS: Okay.

8 (Witness excused.)

9 THE COURT: All right. We'll  
10 take a break for you folks to use the  
11 facilities.

12 DEPUTY: All rise for the jury  
13 please.

14 (Jury out of box.)

15 THE COURT: Please be seated.  
16 State is indicating that it has some issues,  
17 number one, it has a witness, Jeranek Diaz,  
18 that it's going to -- Mr. Griffin, I'm going  
19 to have you call Mr. Jeranek Diaz now.

20 ATTORNEY GRIFFIN: Could you have  
21 Mr. Diaz come in. Can Officer Lazo just take  
22 a seat or --

23 THE COURT: Please.  
24 Mr. Diaz, come in please.

25 Mr. Diaz, I'm going to have you come on in,

1       sir. I'm going to have you come on up to the  
2       witness stand. Come on up here. Hands out of  
3       your pockets. Raise your right hand.

4                       JERANEK DIAZ, called as a witness  
5       herein, having been first duly sworn, was  
6       examined and testified as follows.

7                       THE COURT: Have a seat please.  
8       Is Spanish your first language?

9                       JERANEK DIAZ: No. English. I  
10      understand English.

11                      THE COURT: All right. Have a  
12      seat. Mr. Diaz, I've asked you to come into  
13      court at this time because there's two issues  
14      that have been brought to my attention with  
15      respect to your potential testimony. Number  
16      one, I want to make a record of this outside  
17      the presence of the jury. The lawyers have  
18      indicated that you have a prior criminal  
19      record. There is a question as to what that  
20      record is, how many juvenile adjudications, if  
21      any, you have, and how many adult criminal  
22      convictions you have.

23                      Have you been given an  
24      opportunity to review your criminal record  
25      with either the district attorney or the



1 defense counsel?

2 JERANEK DIAZ: No ma'am.

3 THE COURT: Would you like an  
4 opportunity to do that so you can --

5 JERANEK DIAZ: No ma'am.

6 THE COURT: Pardon me?

7 JERANEK DIAZ: No ma'am.

8 THE COURT: You don't care what  
9 kind of convictions you have?

10 JERANEK DIAZ: It's no felonies.  
11 No nothing. It's only for driving.

12 ATTORNEY GRIFFIN: Well, just so  
13 you know, Judge, he has a record in Texas as  
14 well that he may not be counting. So it's  
15 around ten or fifteen, it's somewhere between  
16 there total.

17 THE COURT: Let me explain how  
18 this works. When you are on the witness stand  
19 and under oath, lawyers can ask you whether or  
20 not you've ever been convicted of a crime.  
21 And you have to answer that truthfully  
22 obviously. And then if the answer to that is  
23 yes, they get to ask you how many times, how  
24 many convictions you have. And you have to  
25 answer that truthfully obviously. And it goes

1 to -- and the jury will be instructed on your  
2 veracity, that you have been convicted of --  
3 as a witness you have prior convictions, it  
4 goes to your veracity which is your  
5 truthfulness on the witness stand. And the  
6 jury will be given a jury instruction that  
7 tells them that, along with any other witness  
8 that has testified or is going to testify that  
9 has a prior criminal record. That's the only  
10 purpose for which the jury can use that  
11 information.

12 In addition, neither lawyer can  
13 ask you anything additionally about your  
14 criminal record so long as you have answered  
15 it truthfully, consistent with what your  
16 record is.

17 JERANEK DIAZ: Yes.

18 THE COURT: If your record shows  
19 15 convictions, whether it's felonies or  
20 misdemeanors, and you say you've never been  
21 convicted of a crime, then the lawyers have an  
22 opportunity to impeach you by taking your  
23 criminal record out and confronting you with  
24 it and asking you if you remember this  
25 conviction or that conviction.

1 JERANEK DIAZ: Yes.

2 THE COURT: If you answer it  
3 truthfully, consistent with what their record  
4 shows, that it's ten or nine or eight or  
5 whatever it is, that's as far as they can go,  
6 they can't ask you anything further about it.  
7 Do you understand everything that I've told  
8 you thus far?

9 JERANEK DIAZ: Yes, I do.

10 THE COURT: Okay. I'm going to  
11 need you to really sit up close to that  
12 microphone, use the mike and speak up real  
13 loud and clear.

14 THE WITNESS: Yes.

15 THE COURT: The record should  
16 reflect this is witness Jeranek Diaz.  
17 Mr. Diaz, I'm going to have you spell your  
18 first name.

19 JERANEK DIAZ: J-E-R-A-N-E-K.

20 THE COURT: And your last name.

21 JERANEK DIAZ: D-I-A-Z.

22 THE COURT: The second issue  
23 that's come up is that the district attorney  
24 has indicated to me that while you were under  
25 subpoena, which is a court order, compelling

1       you to testify in this matter, and in fact, if  
2       you refuse or -- or don't wish to abide by the  
3       court order, the court can be asked whether or  
4       not I wish to issue what's called a body  
5       attachment, where you'll be taken into custody  
6       by law enforcement. I haven't been asked to  
7       do that yet, but I've been told that you're  
8       antsy. Actually I've been told a couple of  
9       witnesses are antsy.

10                       While that's unfortunate, that's  
11       the nature of this business. Just because you  
12       get antsy, doesn't mean that you get to break  
13       subpoena. I don't know, where do you have to  
14       go today?

15                       JERANEK DIAZ: I got things to  
16       do.

17                       THE COURT: What do you want --  
18       do you have to do today?

19                       JERANEK DIAZ: Oh, my baby -- I  
20       left her with the -- an unexpected baby-  
21       sitter, and she ain't feeling too good. And I  
22       was -- I thought it was only going to take a  
23       couple hours though, I figure it was going to  
24       be like two hours, but it's been since 9:00  
25       this morning, so. And she ain't got a phone

1           where I can contact her.

2                       THE COURT:   And where is -- where  
3           is your mother or other individuals or the  
4           baby's mother?

5                       JERANEK DIAZ:   She's at work.

6                       THE COURT:   When does she get off  
7           work?

8                       JERANEK DIAZ:   She don't get off  
9           till 4:00.

10                      THE COURT:   Okay.   And then she  
11           will take care of the child?

12                      JERANEK DIAZ:   Yes.

13                      THE COURT:   So who made  
14           arrangements for the baby-sitter?

15                      JERANEK DIAZ:   I did.

16                      THE COURT:   So you have a baby-  
17           sitter that's watching your child right now?

18                      JERANEK DIAZ:   Yes.

19                      THE COURT:   Okay.   If you don't  
20           have a baby-sitter, who watches the child?

21                      JERANEK DIAZ:   I do.

22                      THE COURT:   Okay.   Are you  
23           employed?

24                      JERANEK DIAZ:   No, I'm not.

25                      THE COURT:   Okay.   You have to

1       make arrangements to make sure that you have a  
2       baby-sitter for the child, because you're  
3       going to be called to the witness stand, from  
4       what I understand, today, and -- in fact  
5       you're going to be called to the witness stand  
6       this morning yet, and it's going to go over  
7       after the lunch hour into the afternoon. And  
8       you are under a court order, a subpoena, to  
9       appear.

10               JERANEK DIAZ: Yes.

11               THE COURT: You violate that  
12       court order, there's several options that I  
13       have. One is to have law enforcement come and  
14       get you pursuant to a body attachment. I'm  
15       sure that that's not going to be necessary;  
16       right?

17               JERANEK DIAZ: No ma'am.

18               THE COURT: Okay. All right.  
19       Let's give him an opportunity to look at his  
20       criminal record. Do you have that, Mr.  
21       Griffin or Mr. Chernin?

22               ATTORNEY CHERNIN: Yes, Your  
23       Honor.

24               ATTORNEY GRIFFIN: Judge, I  
25       believe it's ten convictions.

1 (Discussion off the record.)  
2 DEPUTY: All rise for the jury  
3 please.  
4 (Jury in box.)  
5 THE COURT: You may be seated.  
6 Mr. Chernin, Mr. Griffin, side  
7 bar.  
8 (Side bar.)  
9 THE COURT: All right. Mr. Diaz,  
10 I'm going to have you stand, I'm going to ask  
11 you to raise your right hand once again and my  
12 clerk will swear you in.  
13 JERANEK DIAZ, called as a witness  
14 herein, having been first duly sworn, was  
15 examined and testified as follows.  
16 THE CLERK: Please be seated.  
17 THE COURT: Mr. Diaz, I'm going  
18 to have you move your seat as comfortably into  
19 that bench in front of you so that you can  
20 speak real loud and clearly into the  
21 microphone. I need you to begin by stating  
22 your full name for the record, spelling your  
23 first and your last name.  
24 THE WITNESS: Jeranek Diaz.  
25 J-E-R-A-N-E-K, D-I-A-Z.

1 THE COURT: You may begin.

2 DIRECT EXAMINATION:

3 BY ATTORNEY GRIFFIN:

4 Q. Mr. Diaz, how old are you?

5 A. I'm 28 years old.

6 Q. Any kids?

7 A. Yes. I got a son, my son in Texas, and a  
8 daughter here in Milwaukee.

9 Q. What do you do for a living?

10 A. I been unemployed, but I'm a -- let me see,  
11 like I be a subs constructor.

12 Q. A what?

13 A. Subs constructor.

14 THE COURT: A sub.

15 THE WITNESS: Constructor.

16 BY ATTORNEY GRIFFIN:

17 Q. Contractor?

18 A. Yes.

19 THE COURT: A subcontractor?

20 A. Yes.

21 BY ATTORNEY GRIFFIN:

22 Q. How long have you lived up here in Milwaukee?

23 A. Since early nineties, sir.

24 Q. Do you know a guy by the name of Richard  
25 Torres?



1 A. Yes, I do.

2 Q. Do you know him by a nickname?

3 A. I just know him by Richard.

4 Q. Did you ever call him Vato?

5 A. I heard people called him Vato, but I don't

6 call him Vato.

7 Q. What's your nickname?

8 A. Rock.

9 Q. Do people call you sometimes Rocky?

10 A. Rocky or Rock, yes.

11 Q. Okay. And guys that aren't your family

12 members, guys like your age that are your

13 friends, parties, they would all call you

14 Rock?

15 A. Yes.

16 Q. Have you ever been convicted of a crime?

17 A. Yes, I have.

18 Q. How many times?

19 A. Ten different times.

20 Q. I want to talk about last January, January

21 31st of 2004. Were you over at David Diaz's

22 house when he got shot?

23 A. Yes, I was.

24 Q. Did you see anyone in that house that

25 morning -- because it was the early morning

1           hours; right?

2    A.    Yes, it was.

3    Q.    Did you see anyone with a gun?

4    A.    No, I didn't.

5    Q.    Didn't see anybody?

6    A.    No.

7    Q.    Did you tell the police that you did?

8    A.    Well, they picked me up right the next day and

9           I was feeling -- I never been through

10           something like this, and they just picked me

11           up and brought me downtown, asked me a whole

12           bunch of questions from different issues and

13           matters, and they're throwing a lot of

14           questions at me.

15   Q.    How did you answer 'em?

16   A.    Well, that was like a year ago, I don't -- it

17           was a whole bunch of different questions, and

18           they just told me if I see someone, I said no.

19   Q.    You told 'em no?

20   A.    Yes.

21   Q.    You told the detectives when -- you didn't

22           tell the detectives, for example, that Slim

23           pointed the gun at David Diaz?

24   A.    No.

25   Q.    You didn't tell them that at that point he,

1 meaning Jeranek, ducked down to avoid being  
2 shot himself?

3 A. No, it was -- that was not the way it was.

4 Q. Well, how was it?

5 A. Well, 'cuz earlier today they gave you this  
6 statement that I had made myself to read it,  
7 to go by it, and I seen there was some stuff  
8 that it wasn't the way I had told them that it  
9 happened.

10 Q. My question to you, Mr. Diaz, is did you duck  
11 down to avoid being shot?

12 A. No.

13 Q. You never ducked?

14 A. No.

15 Q. Did you hear a gunshot fired?

16 A. Yes, I did.

17 Q. Where?

18 A. In the kitchen.

19 Q. In the kitchen?

20 A. Around the area, it sound so close, it sound  
21 like right in the kitchen.

22 Q. Like how far away from you was that gunshot?

23 A. Like three feet, four feet away.

24 Q. How far was David away from you?

25 A. Like two feet.

1 Q. Where did the gunshot come from?

2 A. I got no idea.

3 Q. Was David looking at you when he got shot?

4 A. He was standing right next to me looking over

5 here.

6 Q. Toward the living room?

7 A. No, towards the kitchen.

8 Q. He was looking toward the kitchen?

9 A. Yes.

10 Q. Did you tell the police that you believe the

11 gunshot was fired from Slim's gun, because the

12 sound of it came from the location that Slim

13 was holding the gun?

14 A. No.

15 Q. Never told them that?

16 A. Well, I said that after I had gotten hit by --

17 but not by -- not by no gun or nothing, it was

18 some physical fighting going on, and then I

19 was barely going like this, see what happened

20 to me, I thought I had gotten a busted lip and

21 that's when it went off. But I never did duck

22 down or seen anybody with a gun or nothing.

23 Q. Do you remember telling the police that you

24 saw Slim hold the gun under his coat and run

25 out the front door?

1 A. No, I told 'em I seen Slim duck down and --  
2 and by the time I looked down, 'cuz my friend  
3 was on the floor, and I just seen him went  
4 down like this, he covered his head, he looked  
5 around, and when I looked up everybody was  
6 gone.

7 Q. Who -- who -- who covered his head up like  
8 that?

9 A. Mr. Slim.

10 Q. When you say Mr. Slim, do you see that guy in  
11 court today?

12 A. Yes, I do.

13 Q. Can you point him out by where he's sitting  
14 and what he's wearing?

15 A. He's sitting right here with the striped  
16 shirt.

17 ATTORNEY GRIFFIN: May the record  
18 reflect the witness has identified the  
19 defendant.

20 THE COURT: It does.

21 BY ATTORNEY GRIFFIN:

22 Q. Did you also tell 'em that Slim's sister  
23 Antonia, who was also in the kitchen, yelled  
24 out, oh my God, you shot him, get out of here,  
25 you shot him?

1 A. I just heard some yelling in the background  
2 and I wasn't really paying attention what was  
3 going on because it was, oh, my God, dying,  
4 bleeding on the floor, so I wasn't paying -- I  
5 just heard all this commotion in the  
6 background. When I looked up everybody was  
7 gone.

8 Q. Did you tell the police, sir, that Slim's  
9 sister, who was also in the kitchen, yelled  
10 out, quote, oh my God, you shot him, get out  
11 of here, you shot him, closed quote?

12 A. I just -- I just said I heard --

13 Q. Did you tell the police that?

14 A. No.

15 Q. That's my question sir.

16 A. No.

17 Q. You never told them that?

18 A. I said I heard commotion and everybody yelling  
19 and jumping, and they even pushed me -- pushed  
20 me around, but by the time I looked up  
21 everybody was gone.

22 Q. Did you tell the police that after Slim ran  
23 out the front door you went to the front door  
24 and observed Slim running around the corner?

25 A. No.

1 Q. Never told them that?

2 A. I just walked out like this, there was nobody

3 out there. Nobody was out there, no cars or

4 nothing. Only my car.

5 Q. When you talked to the police, do you remember

6 Detective Schuler?

7 A. I remember him.

8 Q. Okay. Kind of a bigger-bellied guy?

9 A. Yes.

10 Q. Did you lie to him?

11 A. Excuse me?

12 Q. Did you lie to him?

13 A. No, I didn't lie to him.

14 Q. You told him the truth; didn't you?

15 A. Excuse me?

16 Q. You told him the truth?

17 A. Well, I told him what I remember, yes.

18 Q. Okay. And you talked to him on February 1st

19 of 2004?

20 A. Right the next date.

21 Q. Would have been Sunday.

22 A. Yes.

23 Q. The shooting happened in the early morning

24 hours of Saturday.

25 A. Yes.

1 Q. And did you talk to him about having been at a  
2 bar before the after hours?  
3 A. Yes, we were at a bar before.  
4 Q. What bar was that?  
5 A. Some bar on 27th Street. Bacardi's or  
6 something like that.  
7 Q. Well, you went to a bunch of different taverns  
8 you told the detective; right?  
9 A. Yes, we going out.  
10 Q. Who did you go out with?  
11 A. With my girlfriend.  
12 Q. Who is that? Just her first name.  
13 A. Her name was at the time -- let me see. My  
14 girlfriend's name?  
15 Q. Yes.  
16 A. Chrissy.  
17 Q. Did you go out with Vato that night too?  
18 A. No.  
19 Q. What about David Diaz?  
20 A. David Diaz was with me.  
21 Q. What about his wife?  
22 A. They were together.  
23 Q. Do you know her name?  
24 A. No. I just know it's Cindy.  
25 Q. Do you know her name is Adriana Diaz?



1 A. Nope.

2 Q. That night did you buy a case of Corona and a  
3 case of Bud?

4 A. Yes, we did.

5 Q. And were you going to drink a couple of those  
6 and then finish the rest after bar closing?

7 A. Yes.

8 Q. And that's what you told the detective; right?

9 A. Yes.

10 Q. Did you tell the detective you left at around  
11 9:00 p.m. to go to some taverns?

12 A. Yes. We left around 9:00 -- 9:30, somewhere  
13 around.

14 Q. And that's what you told the detective?

15 A. That we had left out to go out to the taverns.

16 Q. And did you tell the detective that in your  
17 car was Heather, David Diaz and Mr. Diaz's  
18 wife?

19 A. Yes.

20 Q. And that in the second car were Vato, Claudia  
21 and Armando?

22 A. Yes.

23 Q. Is that true?

24 A. I think that's who it was in the car.

25 Q. Well, it's been awhile; right?

1 A. Yes.

2 Q. But when you were telling the detective all  
3 these things, at least up to till this point  
4 you weren't lying, you were telling the  
5 detective what happened that night?

6 A. On yeah, what I remembered.

7 Q. Right. Did you tell them that you went to a  
8 tavern called Lenny's at 68th and National and  
9 drank for a little bit. And after that you  
10 went to the Macho, M-A-C-H-O, Lounge, down on  
11 the east side, and after leaving the Macho  
12 Lounge they decided to meet over at Bacardi's  
13 on 27th and Lincoln?

14 A. I don't really remember, but it -- it wasn't  
15 like that.

16 Q. Well, do you remember telling the detective  
17 these things?

18 A. Not a Macho Lounge or nothing.

19 Q. When you talked to the detective about these  
20 things were you lying to him?

21 A. I wasn't lying. I was telling him what I  
22 remembered.

23 Q. Okay. And your memory was way better back  
24 then about all of this than it is today?

25 A. Well, it's been a while already.

1 Q. Is that a yes, your memory was better then  
2 than today?  
3 A. It was better then than today?  
4 Q. Yeah.  
5 A. No.  
6 Q. Your memory of all this is better today than  
7 it was a year ago or was your memory better a  
8 year ago?  
9 A. Probably a year ago.  
10 Q. Did you tell the police that the second car  
11 containing Vato, Claudia and Armando never  
12 made it to Bacardi's, your group stayed at  
13 Bacardi's until approximately bar closing,  
14 which would have been about 2:30 a.m.? Did  
15 you tell the detective that?  
16 A. I don't remember.  
17 Q. Do you remember that happening?  
18 A. Yes.  
19 Q. So you went to Bacardi's?  
20 A. I went to Bacardi's.  
21 Q. And you don't recall seeing Vato there?  
22 A. I don't recall.  
23 Q. Did you see Slim there?  
24 A. Yes.  
25 Q. What about his sister Antonia?

1 A. No, I don't recall seeing her.

2 Q. Did you see Tony Valdez?

3 A. Yes, I did.

4 Q. How about Luciano?

5 A. I don't know Luciano.

6 Q. Did you tell the detective that there was a

7 group of Hispanic and black individuals that

8 they knew at Bacardi's and they talked about

9 going over to David's house after bar closing

10 for an after set?

11 A. Yes.

12 Q. And was that true? Is that what happened?

13 A. Yes, we got together after the bar and we went

14 to the house.

15 Q. What's an after set to you?

16 A. Well, it's where you just hang out, have some

17 beers, talk to your friends and that's about

18 it. Call it a night, then go home.

19 Q. Did you tell the police -- strike that.

20 Did you drive over to Mr. Diaz's

21 house at approximately 2:30 or 2:40, and at

22 that time was David Diaz, his wife and

23 Heather, were they all with you?

24 A. Yes.

25 Q. And did you tell the detective that?

1 A. Yes.

2 Q. Once you arrived at the house did you see

3 Vato, Claudia and Armando waiting outside in

4 that second car?

5 A. They were inside waiting.

6 Q. In the car or in the house?

7 A. In the house.

8 Q. Did you tell the detective that once you

9 arrived at the house with your group you saw

10 Vato, Claudia and Armando waiting outside in

11 that second car?

12 A. I just remember they were out there waiting

13 for us. We just got there and we walked in

14 the house.

15 Q. After that, it -- a group of black and

16 Hispanic friends from the bar arrived shortly

17 thereafter?

18 A. Yes.

19 Q. And everybody then went inside?

20 A. Yes.

21 Q. Did that include Slim?

22 A. Yes.

23 Q. Who did Slim get there with? Do you remember?

24 A. I don't remember.

25 Q. Everybody was on the first floor; is that

1 right?

2 A. Yes.

3 Q. How about Cindy, David Diaz's wife, appeared

4 to feel uncomfortable and had gone upstairs;

5 is that right?

6 A. I assume she went upstairs.

7 Q. Did you see her head up the stairs?

8 A. No.

9 Q. You just knew through word of mouth that she

10 was upstairs?

11 A. Yes.

12 Q. How close were you and David Diaz?

13 A. I had just met him like four -- four months

14 before this happened.

15 Q. Was he a friend of yours?

16 A. Yes.

17 Q. Is it true that you had asked somebody what

18 was up with that, meaning Cindy going

19 upstairs, and somebody told you that Cindy had

20 that been hit with a barbell and got upset?

21 A. I don't even know nothing about that.

22 Q. Did you tell the detective that?

23 A. No.

24 Q. Did you tell the detective that David Diaz

25 went upstairs shortly thereafter and after a

1 short time he came downstairs, and then when  
2 he came downstairs he was angry because  
3 somebody had hit his wife with a barbell and  
4 he wanted people to quote, leave his house  
5 now, closed quote?  
6 A. That's what I heard.  
7 Q. Was that true?  
8 A. Yes.  
9 Q. And that's -- you told the detective all these  
10 things; right?  
11 A. No, well, I didn't see nothing like that goin'  
12 on or nothing.  
13 Q. I'm talking about what you heard.  
14 A. I didn't even tell the detective about it.  
15 Q. About what?  
16 A. About her getting hit, 'cuz I didn't see  
17 nothing getting hit.  
18 Q. So you would have no idea where the detective  
19 would have come up with that?  
20 A. Probably somebody else's statement or  
21 something.  
22 Q. Okay. And did you tell them that at that time  
23 when David came down, a guy by the name of  
24 Slim was upset at the party?  
25 A. Yes.

1 Q. Did you tell the detective that Slim was  
2 acting quote, goofy, as if he was quote,  
3 possessed, closed quote?  
4 A. I didn't say that.  
5 Q. You didn't -- so you would have no idea why  
6 the detective would put that in quotes, even  
7 in his --  
8 A. No.  
9 Q. No?  
10 Was Slim attempting to get into a  
11 fight with a Hispanic male by the name of Jay?  
12 A. Yes.  
13 Q. Okay. Who's Jay?  
14 A. Jay is a friend. I don't know his name, I  
15 just know Jay.  
16 Q. Did Slim say to Jay, I'm going to fuck you up,  
17 I don't care if you want to fight, I'll wait  
18 for you outside, closed quote?  
19 A. I don't know. I didn't hear that.  
20 Q. No?  
21 A. I was in the living room when everything was  
22 going on.  
23 Q. Did you tell the detective that?  
24 A. No.  
25 Q. Did you -- did you see Slim snatch Jay's



1 necklace and rip it off? Rip part of it off  
2 Jay's neck?  
3 A. I didn't see that either, I was in the living  
4 room.  
5 Q. Did you tell the detective you saw it?  
6 A. No.  
7 Q. So you didn't know anything about Slim  
8 snatching any necklace?  
9 A. Um-umm (meaning no). Nope, I didn't.  
10 Q. And you wouldn't have mentioned that to the  
11 detective?  
12 A. No, but I -- I knew something had gone on with  
13 the necklace, but I didn't see it, and I --  
14 I -- I wasn't -- I was in the living room, I  
15 didn't even hear that going on.  
16 Q. You were in the living room during this whole  
17 time?  
18 A. Yes.  
19 Q. Okay. At that point did Slim and Jay start to  
20 tussle? You wouldn't know 'cuz you were in  
21 the living room; right?  
22 A. Yes.  
23 Q. And you didn't tell the detective that at that  
24 point Slim and Jay started to tussle; right?  
25 A. No, 'cuz I didn't see 'em.

1 Q. Did Jay kept telling Slim that he didn't want  
2 to fight?

3 A. I wasn't there to see him say that. I  
4 didn't --

5 Q. Did you tell the detective that at -- when  
6 Slim and Jay started to tussle, Jay kept  
7 telling Slim that he did not want to fight?

8 A. I didn't see him arguing or fight, I just  
9 heard that they were going on, but I stayed in  
10 the living room talking with the party I was  
11 talking to.

12 Q. Did you tell the detective Jay kept moving  
13 around the table in the kitchen attempting to  
14 avoid Slim, and at that point David Diaz came  
15 into the kitchen and told Slim that he had his  
16 family upstairs and Slim should not be  
17 disrespecting his house and his family?

18 A. Yes, he did came out -- down from -- he came  
19 down and he did say that they were getting too  
20 loud, for them to leave, they were going to  
21 get loud.

22 Q. Did you hear Slim or see Slim tell David Diaz,  
23 I don't give a fuck about you and your family,  
24 I'll burn this mother fucking crib down with  
25 or without your family, closed quote?

1 A. No.

2 Q. Did you tell the detective that, sir, that  
3 that's what Slim had said?

4 A. No.

5 Q. Did you -- did you tell the detective that  
6 David did not respond to Slim, but seemed  
7 upset and turned around and talked to you in  
8 Spanish, and told you to get rid of Slim and  
9 to get him out of the house?

10 A. That's when David Diaz came into the living  
11 room, he got me to go talk to Slim, to tell  
12 him. That's when I went and told Slim to take  
13 it easy, come outside or something, you know.

14 Q. Did you then approach Slim and tell Slim to  
15 chill, to relax, that quote, it doesn't have  
16 to be like that, closed quote?

17 A. Yes.

18 Q. So at this point you went back into the  
19 kitchen, all that other stuff you weren't  
20 there for, if it happened?

21 A. I wasn't in the kitchen, this is my first  
22 time -- I was barely going in the kitchen for  
23 the first time that night.

24 Q. So that -- when -- the first time you walked  
25 into that kitchen was to tell Slim to chill?

1 A. Yes.

2 Q. And you never saw him grab Jay's necklace?

3 A. No.

4 Q. And when you talked to Detective Schuler, you

5 knew nothing about any necklace at that point?

6 A. I just had heard about it, but I didn't know

7 nothing about it, who had done what or what

8 happened with that necklace.

9 Q. Who did you hear about it from?

10 A. Well, there in the -- in the house when

11 everybody was saying the necklace was laying

12 on the table.

13 Q. Everybody was saying that?

14 A. Well, that I seen it on the table.

15 Q. When did you see it on the table?

16 A. When I walked into the kitchen.

17 Q. And how did you know how it had gotten on the

18 table? How did you know that Slim had

19 snatched it?

20 A. Well, I didn't know.

21 Q. Oh. And you never told the detective that

22 Slim snatched it; right?

23 A. No.

24 Q. When you told Slim it doesn't have to be like

25 that, did he then tell you, quote, I'll fuck

1           you up?

2    A.    He tell me?

3    Q.    Yeah, did Slim tell you that?

4    A.    Yeah, he got into some words with me.

5    Q.    And did he say, let's box, let's box outside,

6           I'm tired of you Mexicans?

7    A.    Yes.

8    Q.    That's what Slim said to you?

9    A.    Yes.

10   Q.    And that's what you told the detectives?

11   A.    Yes.

12   Q.    And did you then tell Slim, fuck that, let's

13           fight right here?

14   A.    Yes.

15   Q.    At that point did Slim then grab you by the

16           neck and start to squeeze you, meaning choke

17           you?

18   A.    He tried to hold me against the wall by my

19           neck and I moved away.

20   Q.    I'm going to ask you to look, Mr. Diaz, at

21           Exhibit Number 1. You can step down and take

22           a look at it. Do you recognize this? I'm

23           going to ask you to stand over there so the

24           jury can -- stand right where it's -- okay.

25                           Do you recognize this as sort of

1 a layout of David Diaz's house?

2 A. The first floor, yes.

3 Q. Okay. The living room area down in here, the  
4 kitchen down in here, I mean up in this area?

5 A. Yes.

6 Q. And the kitchen table was kind of a wood one  
7 in the middle?

8 A. Yes, it was.

9 Q. Where were you and Slim when Slim was choking  
10 you?

11 A. I was right here, right next to this door.

12 Q. And again, you're pointing on this exhibit to  
13 the area of this residence which is just to  
14 the left on the diagram of where the number 11  
15 is written in in ink, 11 feet, just a little  
16 bit above and to the right of the head of the  
17 body figure on there; right?

18 A. Yes.

19 Q. Okay. And how long was he choking you? Or  
20 squeezing you?

21 A. Not for long, not for long, he just laid his  
22 hand on me and I moved it right over.

23 Q. Okay. At this point -- hang on a second --  
24 you and Slim are right here, where is Vato?

25 ATTORNEY CHERNIN: Excuse me,

1           Mr. Griffin, I don't want to interrupt, but  
2           for the sake of the record, when you said  
3           'right here,' can you describe it.

4                        ATTORNEY GRIFFIN: Right where he  
5           pointed to before.

6                        ATTORNEY CHERNIN: Where on  
7           the --

8                        ATTORNEY GRIFFIN: The same place  
9           that I made a record of before.

10                      ATTORNEY CHERNIN: Okay.

11 BY ATTORNEY GRIFFIN:

12 Q. You and Slim are right here where you  
13       indicated before; right?

14 A. Yes.

15 Q. Where is David?

16 A. Right next to me.

17 Q. Just what would be a little bit to the south?

18 A. Like two feet away.

19 Q. And where is Vato?

20 A. I don't know where Vato was.

21 Q. Where is Slim's sister? If you recall.

22 A. I don't know, they was all in here in the  
23       kitchen.

24 Q. Where was Jay?

25 A. Jay was over here.

1 Q. And what about Donald or Donny?

2 A. I don't know Donny.

3 Q. Okay. And when you said Jay was here, you

4 were talking to the area of -- on this --

5 again on Exhibit Number 1, just to the left of

6 the square with the circle number 2 that

7 represents the table, just to the left or just

8 west of the table?

9 A. Just to the left.

10 Q. Okay. Do you remember a -- a -- kind of a

11 medium complexion, African-American gentleman

12 over here by the sink maybe rolling a blunt or

13 anything like that?

14 A. No, I don't.

15 Q. Was Jay rolling a blunt?

16 A. No, he wasn't.

17 Q. And where was Cindy Diaz, Adriana Diaz,

18 David's wife?

19 A. I don't know. She was nowhere on the first

20 floor.

21 Q. Okay. Were people from the party going

22 upstairs?

23 A. No.

24 Q. How many people were in the front room

25 while -- when you left the front room to go



1 tell Slim to chill out and he ended up choking  
2 you, how many people were still in the front  
3 room?

4 A. I don't recall, probably like 13 -- 10 people.

5 Q. Do you recall any girls being in there?

6 A. Girls.

7 Q. What about Isaiah?

8 A. Isaiah? I don't know if he was there.

9 Q. What about Tony?

10 A. He had left already. Tony had left.

11 ATTORNEY GRIFFIN: If you could  
12 have a seat again.

13 BY ATTORNEY GRIFFIN:

14 Q. While -- strike that.

15 While you and Slim were fighting,  
16 or he was choking you and you knocked his hand  
17 away, did Vato come to help you?

18 A. No.

19 Q. No? Do you recall telling the police that  
20 while Slim is attempting to fight you Vato  
21 comes to help you?

22 A. Yeah, 'cuz first he's trying to choke me and I  
23 pushed him away, and then he -- he punched me.

24 Q. Who did?

25 A. Slim did. He jabbed me, but I moved and he

1           just -- he just -- he didn't get to hit me  
2           real hard, he just like, I -- I got to move  
3           out of the way. He didn't hit me.

4   Q.   Did you tell the police that Vato punched Slim  
5           a couple of times and became involved in the  
6           fight?

7   A.   Yes. After, after he hit me with his fist  
8           that's when they started going at it, yeah.

9   Q.   Okay. So at some point you become aware again  
10          then of Vato there in the kitchen with you?

11  A.   I don't know where he was at, all of the  
12          sudden he was there.

13  Q.   Right. He's right there where you and Slim  
14          are?

15  A.   Yes.

16  Q.   And David's right there too; right?

17  A.   Yes.

18  Q.   Anybody else?

19  A.   I don't remember who else.

20  Q.   What about Isaiah?

21  A.   I don't remember. I don't know if he had left  
22          or what.

23  Q.   Did you see Vato punch Slim a couple times?

24  A.   No, 'cuz it happened so fast just when I was  
25          checking out my lip, seeing if I had a busted

1 lip, I just seen him wrestling or something,  
2 and that's when I just heard the gun went off.

3 Q. Did you tell the police that a second guy by  
4 the name of Isaiah also joined in the fight,  
5 that Isaiah was a friend of Slim's, but  
6 believed Slim was out of order and acting  
7 crazy, and that's why Isaiah also started to  
8 punch on Slim?

9 A. I don't know. I still to right now I don't  
10 know who that other guy was. I only know he  
11 was Richard, it was Richard, and I don't know  
12 who that other dude was.

13 Q. I'm going to show you a picture marked Exhibit  
14 20. Do you know that guy?

15 A. I know that guy, yes.

16 Q. Is that Isaiah?

17 A. That's Isaiah.

18 Q. Is that the Isaiah that was at the party?

19 A. I think he was at the party.

20 Q. And when you talked to Detective Schuler, and  
21 you said Isaiah, would that be the Isaiah you  
22 were talking about?

23 A. Yes, he was there.

24 Q. Did Isaiah come in and help out or you don't  
25 recall?

1 A. I don't recall who it was.

2 Q. And again, you were not lying to the detective  
3 when you spoke to him; correct?

4 A. Well, I don't remember who it was.

5 Q. And would you not have told the detective  
6 Isaiah though unless it was true?

7 A. Yes.

8 Q. Okay. Do you recall telling the detective  
9 that part about Isaiah was a friend of Slim's,  
10 but believed that Slim was out of order and  
11 acting crazy, and that's why Isaiah also  
12 started to punch on Slim?

13 A. Because I don't even -- I didn't see -- I  
14 didn't know -- I don't know whether it was  
15 Isaiah who was doing it. I don't -- even a  
16 lot of people had left, I don't know if he was  
17 one of the guys who had left like minutes  
18 before this happened.

19 Q. The place kind of emptied out?

20 A. Yes, kind of.

21 Q. Because of all the stuff going on in the  
22 kitchen?

23 A. No, not 'cuz of that, because of -- I don't  
24 know, everybody started leaving.

25 Q. Did you tell the police that both Vato and

1           Isaiah punched Slim two to three times?

2    A.    No.

3    Q.    Did you see Slim get punched a couple of times

4           by at least two different people?

5    A.    I just seen 'em, they brought 'em down from

6           his jacket, they pulled him down, and he

7           was -- he was down like this. He was down and

8           the guys were hitting him.

9    Q.    And did you tell them that at this point Slim

10          bent down slightly and reached into his jacket

11          and pulled out a handgun?

12   A.    No.

13   Q.    You never told the detective that?

14   A.    I never seen the gun.

15   Q.    Did you tell the detective that, sir?

16   A.    No, I didn't.

17   Q.    If you did tell the detective that, would you

18          have been lying?

19   A.    No.

20   Q.    Did you tell the police that this handgun was

21          a silver handgun with black grips and you

22          thought it was a semiautomatic?

23   A.    No.

24   Q.    You never said anything like that to the

25          detective?

1 A. I never seen no gun.

2 Q. But you would agree with me though that if you  
3 told the detective these things, it was true?

4 ATTORNEY CHERNIN: Objection. It  
5 calls for --

6 A. What do you mean?

7 ATTORNEY CHERNIN: Question's  
8 vague.

9 THE COURT: You started to say  
10 speculation. Overruled. Question's vague.  
11 Overruled. I'll allow it. Rephrase it  
12 though, Mr. Griffin.

13 BY ATTORNEY GRIFFIN:

14 Q. Mr. Diaz, when you spoke to Detective Schuler,  
15 everything you told him was what you believed  
16 at that moment to be correct and accurate and  
17 true; right?

18 A. Yes.

19 Q. Okay. And was the detective taking notes when  
20 you talked to him?

21 A. Yes.

22 Q. Did you see a silver handgun with black grips?

23 A. No, I didn't.

24 Q. Did you make that up for the detective?

25 A. No.

1 Q. Did you tell the detective that Slim pulled  
2 this gun out and now pointed it at David Diaz,  
3 who was still standing close by in the  
4 kitchen?

5 A. No, I didn't. I didn't state that.

6 Q. And you never saw that of course?

7 A. No sir.

8 Q. Did you tell the detective that Diaz, David  
9 Diaz, had just turned around and was about to  
10 leave the kitchen?

11 A. No. He had -- I don't know what he did when I  
12 just got hit, I don't know what happened. I  
13 was just like this, and I just remember seeing  
14 him standing next to me, and boom, that's when  
15 it went off. I don't -- I don't remember  
16 seeing nothing like pointing the gun at nobody  
17 or nothing.

18 Q. And a year ago you remember things a lot  
19 better though; right?

20 A. I -- I remember things a lot better?

21 Q. Yeah. You wouldn't forget about the gun;  
22 would you?

23 A. No, I wouldn't.

24 Q. Your memory's not that bad?

25 A. No.

1 Q. I mean, if you had seen Slim point a gun at  
2 David Diaz's head and shoot --  
3 A. Yes.  
4 Q. -- you would remember that?  
5 A. Yes, I would have.  
6 Q. And you wouldn't have told the detective that  
7 you saw Slim with a gun unless you had seen  
8 Slim with a gun?  
9 A. Yes.  
10 Q. So you never told this to the detective?  
11 A. I never told him I seen him with a gun  
12 pointing at nobody.  
13 Q. Did you tell the detective, as I asked before,  
14 that David Diaz had just turned around and was  
15 about to leave the kitchen?  
16 A. No, I didn't say that either.  
17 Q. Did you tell him that Slim pointed the gun at  
18 David Diaz?  
19 A. No, I just seen Slim fighting with the guys  
20 when the gun went off and I just seen him duck  
21 down.  
22 Q. Right. Mr. Diaz, it's very clear what you're  
23 saying today, my question is, did you tell the  
24 detective that back then?  
25 A.. Well, that's what they wrote down, they were



1 asking me all these questions and --

2 Q. What questions were they asking you, sir?

3 A. I don't know. They were asking me the

4 questions that are on the statement.

5 Q. Exhibit 15, they were talking to you about

6 this; weren't they?

7 A. Yes.

8 Q. Your guy, your friend, your buddy, David Diaz;

9 right?

10 A. Yes.

11 Q. The guy who got shot in the head two feet from

12 where you were standing?

13 A. Yes.

14 Q. And you told them you saw Slim with a gun;

15 didn't you?

16 A. No.

17 Q. You never said that? You never said silver

18 gun with black grips that he pointed it out,

19 David turned around to go into the living room

20 and boom, he point at his head and shot him?

21 A. No, 'cuz Slim was handling the two guys when

22 the gun went off. He was fighting with two

23 guys, that's when I just seen the smoke going

24 off.

25 Q. You saw the smoke going off?

1 A. The smoke going, just went and I just seen  
2 smoke going up on the -- inside the -- the  
3 kitchen.  
4 Q. From where?  
5 A. I don't know.  
6 Q. Are you talking about the smoke that comes out  
7 of the barrel of a gun?  
8 A. I don't know.  
9 Q. Just smoke?  
10 A. I just seen smoke.  
11 Q. Did you smell it?  
12 A. I didn't smell it.  
13 Q. Where was that? As you're -- stand up for a  
14 minute. On this diagram, when the shot goes  
15 off, are you standing with this wall to your  
16 back?  
17 A. Yes.  
18 Q. Okay. And point to where David would be. No,  
19 don't turn, keep looking at me, the wall's  
20 behind you, where's David?  
21 A. David's standing right next to me.  
22 Q. Where is Slim?  
23 A. Slim's right there in front of me.  
24 Q. Right there. So if Slim had reached out his  
25 arm, for example, and put it to the back of

1 David's head, that gun barrel would have been  
2 how close to David's head? Inches?

3 A. Probably right on it.

4 Q. Right on it, like two inches away; am I right?

5 A. You're right.

6 THE COURT: We're going to take a  
7 break. Mr. Griffin, please be seated. It's  
8 ten minutes after the hour of twelve. Ladies  
9 And gentlemen, I've been advised that the  
10 luncheon has been brought up in the back room  
11 waiting for you. We're going to reconvene at  
12 1:15.

13 DEPUTY: All rise for the jury  
14 please.

15 (Jury out of box.)

16 THE COURT: Please be seated.  
17 Mr. Diaz, I'm going to remind you that you  
18 remain under oath. We're going to reconvene  
19 and have you back up on the witness stand at  
20 1:15 this afternoon. You may step down, sir.

21 ATTORNEY GRIFFIN: Could you just  
22 remind him, Judge, I haven't actually spoken  
23 to him, that he's not to discuss --

24 THE COURT: I have a  
25 sequestration order in place. What a

1       sequestration order is, Mr. Diaz, is that you  
2       are not to discuss your testimony with  
3       anyone --

4                   THE WITNESS:   Okay.

5                   THE COURT:   -- until -- until  
6       directed to do so by this court.

7                   THE WITNESS:   I hear you.

8                   THE COURT:   Do not allow anyone  
9       to approach you and discuss your testimony.  
10      And you're ordered back to the witness stand  
11      at 1:15.

12                  THE WITNESS:   All right.

13                  THE COURT:   We're on our lunch  
14      break.   We'll reconvene at 1:15.

15                               (Lunch break taken.)

16                  THE COURT:   Recalling State v.  
17      Danny Wilber, 04CF000609, first degree  
18      intentional homicide while armed with a  
19      dangerous weapon.   Appearances please.

20                  ATTORNEY GRIFFIN:   Assistant DA  
21      Jim Griffin for the State with Detective Tom  
22      Casper of the Milwaukee Police Department.

23                  ATTORNEY CHERNIN:   Michael  
24      Chernin appearing on behalf of Danny Wilber,  
25      who appears in person.

1                   Your Honor, before we commence  
2           the jury and return to Mr. Diaz, it -- this is  
3           the first opportunity I've had to ask this. I  
4           wasn't exactly certain how the shoe evidence  
5           and the burned soles and the can --

6                   ATTORNEY GRIFFIN: I'm going to  
7           just -- can we deal with this like maybe at  
8           the end of the day, because we're going to  
9           talk about an issue that isn't going to become  
10          relevant today; correct?

11                  ATTORNEY CHERNIN: No, I don't --  
12          I don't think it would be.

13                  ATTORNEY GRIFFIN: If I may, I  
14          think Mr. Chernin wants to talk about --

15                  ATTORNEY CHERNIN: We'll talk  
16          about it.

17                  THE COURT: Yeah, timing wise to  
18          do such -- to engage in any additional legal  
19          conversations and -- and keep the jury out of  
20          the box doesn't seem -- if it's not something  
21          that's relevant to today's proceedings seems  
22          to be a -- seems to be a waste of time, and  
23          I'm not going to do that. We'll do it at the  
24          end of the day today or on the morning of the  
25          time if it becomes relevant.

1                   Let's bring the jury out.

2                   DEPUTY: All rise for the jury.

3                   (Jury in box.)

4                   THE COURT: We're going to

5           continue with the direct examination of this

6           witness on the State's behalf.

7                   Mr. Griffin.

8   BY ATTORNEY GRIFFIN:

9   Q.   Mr. Diaz, I believe we were talking about you

10       seeing smoke in the kitchen from something.

11   A.   Yes.

12   Q.   Right?

13   A.   Yes.

14   Q.   Moments after -- instants after the gunshot;

15       right?

16   A.   Right after the gunshot, yes.

17   Q.   Okay. I'm going to ask you to assume for a

18       minute that this is that kitchen wall again

19       with your back to it; right?

20   A.   Yes sir.

21   Q.   I'm going to ask you to come down and stand

22       right here with your back up against the

23       wall. I don't know if you remember whether

24       your back was touching the wall or not, but I

25       want you to point for a minute exactly where

1 David Diaz would be.

2 A. Right next to me.

3 Q. Okay. And you're pointing again with your  
4 left hand out, you say right next to you. Do  
5 you remember, for example, could you have  
6 touched his shoulder, or you don't recall that  
7 specifically?

8 A. What do you mean, touch his shoulder?

9 Q. If you had reached out could you have touched  
10 him?

11 A. Yes. Yes.

12 Q. Okay. And do you recall, for example, was he  
13 facing you, was he facing the wall, the living  
14 room, the kitchen, the cabinets? About as  
15 best you recall, where was he and what was he  
16 looking at?

17 ATTORNEY CHERNIN: At what point  
18 in time?

19 BY ATTORNEY GRIFFIN:

20 Q. In the moments before the shooting. The  
21 moments before as you were rubbing your lip  
22 thinking, boy, he hit me?

23 A. He was looking forward to the kitchen.

24 Q. I'm sorry?

25 A. He was looking forward.

1 Q. So he would have been --

2 A. To the table --

3 THE COURT: Let's just stop.

4 Let's just stop. Let's stop for one moment.

5 Mr. Chernin, raise an objection, don't

6 interrupt the direct examination.

7 Mr. Griffin, make sure when you ask the

8 question, you allow the witness to respond.

9 And, Mr. Diaz, please wait until the entire  
10 question has been asked of you, otherwise this  
11 record is going to be extremely muddled.

12 ATTORNEY CHERNIN: I'm sorry. My  
13 objection was vague, Your Honor.

14 THE COURT: It was just an  
15 interruption, an inappropriate one at that.

16 Let's continue.

17 BY ATTORNEY GRIFFIN:

18 Q. In other words, in the instance before there  
19 was a bang and you saw smoke, were you  
20 shoulder to shoulder with David Diaz?

21 A. No, I wasn't.

22 Q. Where was Mr. Diaz? I'll assume your position  
23 here and you be Mr. Diaz. David Diaz.

24 A. Mr. Diaz was right here, right next to me.

25 Q. And where is Slim?



1 A. Right in front, right like three feet away  
2 from me.  
3 Q. And a little bit on a diagonal from you?  
4 A. Yes.  
5 Q. Where was Vato?  
6 A. Right -- right in front of Slim.  
7 Q. Okay. So in other words, between you and Vato  
8 is Slim?  
9 A. Yes.  
10 Q. Okay. And is there anyone else in that  
11 immediate area there around the four of you?  
12 A. No.  
13 Q. Okay. If you would take the stand again.  
14 As I recall, you were saying  
15 earlier this morning that you did not see Slim  
16 with a gun that -- that morning, early morning  
17 hours; right?  
18 A. No sir.  
19 Q. You never saw him with a silver handgun with  
20 black grips?  
21 A. No sir.  
22 Q. And even more importantly, or just as  
23 importantly, you sure as heck never told any  
24 detective that you saw Slim with a silver  
25 handgun with black grips?

1 A. No sir.

2 Q. Did you duck down when you heard the shot?

3 A. I don't recall. I just remember the gunshot  
4 went out when I was rubbing my lip like this,  
5 and I just heard that. And after that I  
6 just -- I saw -- I just heard the gunshot went  
7 off.

8 Q. Okay. I'm going to ask you to come off the  
9 witness stand again, stand with your back to  
10 that wall. You're rubbing your lip, right?  
11 The gunshot goes off. Point to where it came  
12 from.

13 A. Here. Somewhere around there. It was so loud  
14 and this is small kitchen I just heard it go  
15 off right like close to me.

16 Q. You're pointing with your left hand sort of  
17 off in what we'll call a left direction.

18 A. Yes, 'cuz when I was -- that's where it went  
19 off.

20 Q. Which would have been, again, assuming David's  
21 right next to you --

22 A. David's right next to me.

23 Q. If I hold a gun to his head and shoot, that  
24 would be where the gunshot was coming from?

25 A. Not right in front of me, it was like on the

1 side over here.

2 Q. On the side over there?

3 A. Yes.

4 Q. If you would take the stand.

5 And at what point, Mr. Diaz I

6 assume then -- Mr. David Diaz fell right in

7 front of you?

8 A. Yes, he did.

9 Q. And did you look to your left?

10 A. I just looked down 'cuz he was on the floor.

11 Q. Well, who was to the left there behind him?

12 A. I didn't see.

13 Q. You didn't see it or you didn't see anybody?

14 A. I didn't see anybody. I didn't see. I just

15 seen my friend going down, so I just followed

16 him down with my eyes.

17 Q. And then you took off running to your left?

18 A. Out the front door, yes.

19 Q. Well, you pointed straight ahead. If your

20 back's to the wall, wouldn't the front door

21 have been straight to your left?

22 A. Yes.

23 Q. So after you see David go down you take off

24 this way to your -- to your left, this way

25 toward the front door?

1 A. Yes.

2 Q. And who was between you and the front door?

3 A. Nobody at the time. Everybody had left.

4 Q. Did you see Slim put the gun back under his

5 coat?

6 A. No.

7 Q. Did you tell the police that after you saw

8 David Diaz go to the ground Slim was now

9 putting the gun back under his coat?

10 A. No.

11 Q. Did you tell the police that you saw Slim hold

12 the gun under his coat and run out the front

13 door?

14 A. No.

15 Q. Did you tell the police that you heard Slim's

16 sister Antonia, who was also in the kitchen,

17 yell out, oh my God, you shot him, get out of

18 here, you shot him?

19 A. I just heard commotion and girls yelling and

20 stuff, but I don't recall exactly what they

21 were shouting out and yelling. I just

22 remember them -- everybody yelling, and by the

23 time I looked up everybody was gone.

24 Q. Did you tell the police that you heard Slim's

25 sister say, oh my God, you shot him, get out

1 of here, you shot him?

2 A. No. I just heard people yelling and  
3 screaming, oh my God, he got shot, or  
4 whatever, you know. But I -- I don't recall  
5 Antonia saying -- yelling anything out about  
6 you shot him or nothing, I just remember the  
7 girls yelling.

8 Q. Did you tell the detective that Slim -- that  
9 after Slim ran out the front door you went out  
10 the front door and saw him running around the  
11 corner?

12 A. No, I'd seen everybody leaving and I went out,  
13 everybody was gone.

14 Q. When you ran out the very front door, how long  
15 did it take you after David Diaz was shot to  
16 get out that front door?

17 A. Like two minutes.

18 Q. What did you do?

19 A. I was checking out my friend.

20 Q. What do you mean, checking him out?

21 A. Yeah, 'cuz he -- he wasn't still dead, he was  
22 moving.

23 Q. He was still like --

24 A. Shaking and stuff, and I thought he was going  
25 to be all right. But I was like, Dave, don't

1       die, don't die, what's up, Dave, and he didn't  
2       say nothing. He just shook a couple of times  
3       and he stopped shaking.

4   Q.   And boom, you headed out the front door?

5   A.   That's when I looked up, there was nobody  
6       around, I just left. I walked out the front  
7       door and there was nobody out there either.

8   Q.   Do you remember now everybody else that was in  
9       that kitchen besides you, Danny, Vato and  
10       David?

11  A.   No, I don't.

12  Q.   Do you remember telling the police back in  
13       February who else was in there?

14  A.   No. We -- we were -- we had been out  
15       drinking, so it was at like 3:00 in the  
16       morning or something, I was kind of drunk.

17  Q.   Do you remember telling the police that also  
18       in the kitchen was -- besides you, David  
19       and -- and Vato, was Slim, Isaiah, a friend of  
20       Slim's, Jay, a guy you might have called  
21       Dumpy?

22  A.   See, I don't know about Dumpy.

23  Q.   Who is Slim's cousin?

24  A.   I don't know.

25  Q.   You don't know?

1 A. I don't know Slim's cousin Dumpy. I don't  
2 know.

3 Q. Could it have been Donny?

4 A. I don't know.

5 Q. Or Dunny or something like that?

6 A. I don't know.

7 Q. But you described to the police some cousin of  
8 Slim's who was also in the kitchen; right?

9 A. No. No, Dumpy.

10 Q. Right, but --

11 A. I didn't know who was there or if they were  
12 related or anything. I didn't know. I didn't  
13 know 'em like that.

14 Q. Do you recall telling the detective on  
15 February 1st that there was a black Indian  
16 male, 28 years of age, about five nine, 160  
17 pounds, who was Slim's cousin?

18 A. No, 'cuz I didn't know him. I didn't even  
19 know he's got a cousin.

20 Q. Did you tell the police that Tonia, the sister  
21 of Slim, or maybe a cousin, black female, 25  
22 years of age, five four, 160 pounds, and the  
23 guy who was in the report as Dumpy's  
24 girlfriend was also there?

25 A. Dumpy's girlfriend?

1 Q. Yeah.

2 A. I don't know.

3 Q. Who you described as a Hispanic female, 21,  
4 five five, 120 pounds.

5 A. I don't know about that.

6 Q. Did you also tell the police there was also  
7 another black man who you didn't know, an  
8 unknown black male who's 30, five ten, 200  
9 pounds, wearing a brown and orange leather  
10 jacket?

11 A. Yes, I recall seeing him there.

12 Q. Where was he?

13 A. He was standing like three feet to my right.

14 Q. Toward the stove?

15 A. Towards the stove, yes.

16 Q. Who was he a friend of?

17 A. I don't know. Not my friend.

18 Q. Was he David's friend?

19 A. No, he was black. He wasn't David's friend.

20 Q. Was he Vato's friend?

21 A. I don't know.

22 Q. Did you tell the police that that guy wearing  
23 the brown and orange leather jacket, that you  
24 believed he was a friend of Slim's?

25 A. Well, I don't know, they were just there



1           together in the kitchen. I didn't say who was  
2           friends with or nothing.

3    Q.    You didn't tell the police that you thought he  
4           was one of Slim's friends?

5    A.    From being black.

6    Q.    That's why you would have made that  
7           association?

8    A.    Yes. Yes.

9    Q.    Did you also tell the police that inside the  
10           residence but not in the kitchen was Claudia,  
11           Heather, Cindy, David Diaz's wife, Nando or  
12           Fernando, who was a friend of Vato's, and  
13           Javy?

14   A.    I don't know Fernando or Javy.

15   Q.    You don't know Javy?

16   A.    No.

17   Q.    Is he a friend of the defendant's?

18   A.    I got no idea, Dude. Or Fernando, I don't  
19           know no Fernando either.

20   Q.    I'm going to show you a photograph that's been  
21           marked as Exhibit 19. Do you know that guy or  
22           recognize him?

23   A.    Yes, I recognize him.

24   Q.    Who is it?

25   A.    Javy.

1 Q. So you do know a Javy?

2 A. I do know a Javy.

3 Q. But you don't know anyone named Fernando or

4 Nando or anything like that?

5 A. No, I don't.

6 Q. Okay. I'm going to show you a -- what I call

7 a photo array or a photo lineup. It's been

8 marked as Exhibit Number 6. Do you recognize

9 that?

10 A. Yes, I do.

11 Q. What is it?

12 ATTORNEY CHERNIN: May I

13 approach, because I have seen it, but I'm not

14 sure which one of the arrays it is. Thank

15 you.

16 BY ATTORNEY GRIFFIN:

17 Q. What is that?

18 A. It's a picture of guys, a picture of Slim

19 circled up.

20 Q. Which one is Slim in that photo array?

21 A. This one right here.

22 Q. Where is he on the thing? Top? Bottom?

23 A. On the bottom middle.

24 Q. In the what?

25 A. Bottom middle.

1 Q. Bottom middle?

2 A. Yes.

3 Q. Is there a circle around his picture?

4 A. Yes, it is.

5 Q. Is that your signature next to it?

6 A. Yes, it is.

7 Q. Why did you circle and sign that picture?

8 A. Because they asked me if I knew Slim, and I

9 said, yeah, I know Slim. And they was like,

10 circle if you see him, so I circled him.

11 Q. When you were with the detective did you

12 positively identify Slim, the guy in that

13 picture I should say, as Slim and the person

14 that did the shooting in this offense?

15 A. They were just saying he was a suspect and

16 they told me if that was Slim, and I said yes,

17 that's Slim right there.

18 Q. Weren't you back on February 1st telling the

19 police, sir, that Slim was the shooter?

20 A. No.

21 Q. Did they show you photo arrays or photos of

22 anyone else?

23 A. Yes, they did.

24 Q. Did you talk to the police about what, if

25 anything, Slim was drinking?

1 A. They asked me what he was drinking. I told  
2 'em we had Bull Watch and Smirnoffs to drink.  
3 Q. Did the police ask you whether he was drinking  
4 a Corona or a Budweiser, and you said neither,  
5 that Slim was drinking some type of clear  
6 alcoholic beverage?  
7 A. No, I just remember saying that he was  
8 drinking a clear bottle.  
9 Q. Do you remember telling the police that when  
10 Slim started drinking this he made a -- kind  
11 of an odd face and asked, what was this that  
12 he was drinking?  
13 A. No.  
14 Q. And you thought it was either a Smirnoff or a  
15 Mike's Hard Lemonade or something like that?  
16 A. I don't recall.  
17 Q. You don't recall that happening?  
18 A. No.  
19 Q. Did you tell the police that on February 1st?  
20 A. They asked me what he was drinking, and I just  
21 told 'em I remember he was drinking something,  
22 but not Budweiser, something out of a clear  
23 bottle.  
24 Q. Do you recall telling the police how when he  
25 drank it he made kind of an odd or a funny

1 face?

2 A. I don't remember now.

3 Q. So it's possible you told 'em that, you just  
4 don't remember it?

5 A. I don't recall.

6 Q. Did you tell the police the David Diaz was not  
7 a violent individual, and even when Slim  
8 threatened to beat him, David Diaz stated  
9 nothing and turned around and walked slightly  
10 away from him and told you in Spanish to have  
11 the guy leave?

12 A. Yes, that's when he came to the living room to  
13 tell me.

14 Q. So that part you did tell the police --

15 A. Yes.

16 Q. -- as well? Not only that happened, and you  
17 told the police it happened?

18 A. What do you mean?

19 Q. Well, is it true that David Diaz said nothing  
20 and turned around and walked slightly away  
21 from Slim when Slim threatened him?

22 A. Yes.

23 Q. What did Slim threaten him with?

24 A. I don't know. I was in the living room.

25 Q. When you talked to Detective Schuler, where

1           was that interview?

2    A.    I don't remember.

3    Q.    How long did it last, approximately?

4    A.    Like -- I don't recall, sir.    Like an hour.

5    Q.    And in the entire time that you were with

6           Detective Schuler, I want to know if you told

7           him any lies.

8    A.    If I told him any lies?

9    Q.    Yep.

10   A.    No, I just told 'em what -- what I had seen,

11           what I thought what happened.

12   Q.    Are you an MP or did you used to be?

13   A.    I am not an MP, never used to be.

14   Q.    Never?

15   A.    No.

16   Q.    Did you ever, to any of the detectives, any

17           detectives, like Detective Schuler, tell 'em

18           you were afraid about all of this?

19   A.    Yeah, 'cuz I never been involved in something

20           like this.

21   Q.    Well, did you ever say to him or to anybody in

22           the world that you were afraid about this

23           because of Slim and what you'd seen him

24           done -- seen him do?

25   A.    No, 'cuz I didn't see him do nothing.

1 Q. And you've never told anyone in the world that  
2 you saw him with a gun; right?

3 A. No.

4 Q. You've never told anyone in the world that you  
5 saw Slim in that kitchen at 1128 West Mineral  
6 with a gun?

7 A. No, I didn't see him with no gun.

8 Q. And you never saw him point it at David Diaz's  
9 head?

10 A. No sir.

11 Q. And you've never told anyone that?

12 A. No sir, not -- I don't recall.

13 Q. You don't recall?

14 A. No.

15 ATTORNEY GRIFFIN: Nothing  
16 further.

17 THE COURT: Cross.

18 CROSS EXAMINATION:

19 BY ATTORNEY CHERNIN:

20 Q. Mr. Diaz, you weren't so afraid of Slim on  
21 January 31st, 2004 that you wouldn't confront  
22 and fight with him; is that true? You weren't  
23 so afraid of him that you wouldn't fight?

24 A. I wasn't afraid of him.

25 Q. Are you afraid of him now?

1 A. No, I'm not.

2 Q. Before I get to these, let me -- let me ask  
3 you another question, is -- you have with  
4 you -- thank you -- on February 1st of 2004  
5 did the police give you the opportunity to  
6 review the piece of paper that you read  
7 earlier today?

8 A. No, they didn't.

9 Q. And you heard Mr. Griffin ask you questions  
10 about -- about Detective Schuler. According  
11 to what you read today, was it Detective  
12 Schuler that prepared that report?

13 A. The statement, yes.

14 Q. Now, in February of 2004 you weren't given an  
15 opportunity to review what was typewritten;  
16 were you?

17 A. No, I wasn't.

18 Q. Did there come a time in July of 2004 when you  
19 were given an opportunity to look at that  
20 report? Did you meet with somebody, Bill  
21 Kohl?

22 A. Somebody did bring it up to me.

23 Q. Okay. You don't remember his name?

24 A. No, I don't.

25 Q. If I described an older white guy taller --



1 A. With the long hair.

2 Q. -- with a long pony tail?

3 A. Yes.

4 Q. Did he give you an opportunity to review the

5 report that you read again today?

6 A. Yes.

7 Q. And in July did you engage in questions and

8 answers with Mr. Kohl, or that guy with the

9 long hair?

10 A. Yes.

11 Q. And in July did you tell him that you were at

12 a house party on January 30th of 2004 on

13 Mineral Street in Milwaukee?

14 A. Yes, I did.

15 Q. That of course is not correct, it was January

16 31st; isn't that correct?

17 A. It was January 30th, it was 31st.

18 Q. And did you tell Mr. Kohl that there were some

19 guys in the kitchen of this residence at 1128

20 West Mineral? Did you tell Mr. Kohl that?

21 A. Yes, I did.

22 Q. Did you tell him that Danny Wilber, also known

23 as Slim, was very intoxicated? Did you tell

24 him that?

25 A. No.

1 Q. Did you tell him that Slim and you were  
2 arguing over a Cadillac that you had sold to  
3 Slim?

4 A. Yes.

5 Q. Did you tell him that Vato -- you've heard  
6 Mr. Griffin talk about Vato, you know him as  
7 Richard Torres; correct?

8 A. Yes, I do.

9 Q. Are you related to Richard Torres?

10 A. No, I'm not.

11 Q. You're not his uncle?

12 A. No. He's not related to me, he's related to  
13 one of my girls, my girlfriend.

14 Q. Okay. Did you tell Mr. Kohl that Vato,  
15 another Mexican, and the victim, David Diaz,  
16 were also there in the kitchen? I guess was  
17 also there?

18 A. Yes.

19 Q. Did you tell him that an argument escalated  
20 between Slim and you?

21 A. Yes.

22 Q. Did you tell them that Slim hit you in the  
23 head, a glancing blow off of your cheek?

24 A. He didn't hit me in the head, he hit me in  
25 my -- in my lip.

1 Q. A glancing blow off of your cheek?  
2 A. Yes.  
3 Q. And that's what you described here in court  
4 today?  
5 A. Yes, I did.  
6 Q. Did you tell him that you turned and you heard  
7 a shot and then you saw smoke from the shot?  
8 A. Yes.  
9 Q. Did you tell Mr. Kohl that you saw David Diaz  
10 on the floor with a gunshot wound to his head?  
11 A. Yes.  
12 Q. Did you tell him that Slim was next to you  
13 holding his head in his hands covering  
14 himself?  
15 A. He wasn't next to me, but now that I remember  
16 he was -- he ducked down and to stop fighting,  
17 to stop -- the fight stopped, and I seen  
18 everybody get down, and then when I looked  
19 down everybody was gone.  
20 Q. Do you recall telling Mr. Kohl that you denied  
21 your statement to the police in which you  
22 identified Slim as the person that shot David  
23 Diaz?  
24 A. Yes.  
25 Q. I'm going to show you what's been marked as

1 Exhibit 15. I'm going to ask you to hold it  
2 so that you can see it. And also, could you  
3 hold it so you can answer questions and have  
4 the jury see it as well.

5 Now, Mr. Diaz, does that picture,  
6 Exhibit 15, show you where David Diaz landed  
7 after he was shot that night?

8 A. That's exactly where he landed when he got  
9 shot.

10 Q. Okay. And were his feet located -- when he  
11 was standing near you you were standing at the  
12 door?

13 A. Right around here, yes.

14 Q. Okay. Right around here. And you're pointing  
15 to the -- what in that picture would be the  
16 right edge of the door; correct?

17 A. Yes, it would.

18 Q. And Mr. Diaz, if he was, according to you,  
19 several feet -- I believe you said two feet  
20 away from you, so that you would be able to  
21 reach out and touch him with your shoulder,  
22 was he at the other edge of the door frame, at  
23 least that far back?

24 A. Must have been like on the other side of the  
25 door edge, yes.

1 Q. And if he was on the other side of the door  
2 edge would he have been behind the counter?  
3 A. Behind the counter.  
4 Q. If one were to draw a line straight from the  
5 counter to the door, he would have been -- his  
6 feet would have been behind the counter; is  
7 that correct?  
8 A. Yes, he would.  
9 Q. Now, you just testified -- and I know this is  
10 probably pretty painful for you -- or was it  
11 painful for you?  
12 A. It's been painful.  
13 Q. Sorry to see your friend lying there trembling  
14 and dying on the floor.  
15 A. Yes, it was painful to see my friend like  
16 that.  
17 Q. And according to what you said earlier,  
18 everybody else had run out of the kitchen at  
19 that point while you were watching your  
20 friend's last moments?  
21 A. Yes.  
22 Q. Did you move or push David Diaz's body in any  
23 way?  
24 A. No, I didn't.  
25 Q. Did you see anyone else move or push David

1 Diaz's body?

2 A. No, I didn't.

3 Q. I'm going to show you that picture again, and

4 I know it's difficult, but when you were going

5 through your demonstration -- and could you

6 show that to the jury again -- when you were

7 going through your demonstration with

8 Mr. Griffin, you said that Richard Torres was

9 somewhere in the vicinity on that picture,

10 Exhibit 15, could you point to the location

11 where you saw Richard Torres where he was

12 standing at the moment of the shot, the moment

13 that you heard the shot.

14 A. He was standing right in front of the sink,

15 right here.

16 Q. So he was closer to David -- he was between

17 David Diaz and -- or let me ask it this way.

18 Was he between David Diaz and Slim? Was

19 Richard Torres between David Diaz and Slim?

20 A. Richard Torres was in front of Slim and David

21 Diaz was to the side of both of 'em.

22 Q. Was to the side of both of them and to the

23 side of you?

24 A. To the side of both of them and to the side of

25 to me.

1 Q. And so when Mr. Griffin was demonstrating  
2 somebody reaching over to shoot Mr. Diaz from  
3 behind, you never saw Danny Wilber, Slim,  
4 doing that; did you?

5 A. No, I didn't.

6 Q. Mr. Diaz was your friend; was he not?

7 A. Yes, he was.

8 Q. And if you could help solve his murder would  
9 you do so?

10 A. I would do anything to get whoever did it. I  
11 would help 'em out so he could get the  
12 judgment he deserves.

13 Q. And it was not -- and it would not be doing  
14 that judgment --

15 A. For somebody who didn't do it.

16 Q. And it wouldn't be that judgment --

17 A. For Slim.

18 Q. -- to point at Slim as the person who shot  
19 David Diaz; is that true?

20 A. That's correct.

21 Q. I'm sorry, let me just ask you one last  
22 question. Did you ever see Danny Wilber,  
23 other -- other than after Mr. Diaz was on the  
24 floor, did you ever see Danny Wilber behind  
25 David Diaz?

1 A. No, I didn't. He was fighting with the two  
2 guys.  
3 Q. And he was fighting with two guys and you;  
4 right?  
5 A. Well, I was behind him and I was checking on  
6 my lip, I was ready to go fight with them and  
7 that's when I went out, so the fight stopped.  
8 Q. And David Diaz was not involved in this fight;  
9 was he?  
10 A. He wasn't a violent person, he wasn't  
11 involved.  
12 Q. And so the person that they're saying that  
13 Slim shot was not even involved in the fight;  
14 right?  
15 A. Exactly, he wasn't involved. He wasn't  
16 involved in the fight.  
17 Q. And Slim didn't pull a gun on you; did he?  
18 A. Not on me.  
19 Q. And he didn't pull a gun on Richard Torres  
20 either; did he?  
21 A. No, not that I -- I didn't see that, no.  
22 Q. Thank you.  
23 THE COURT: Anything further,  
24 Mr. Griffin?  
25 REDIRECT EXAMINATION:



1 BY ATTORNEY GRIFFIN:

2 Q. Mr. Diaz, I know this is all very painful for  
3 you now, I can see that, but I want to know,  
4 at the moment of the shot, I want you to name  
5 all of the people that were within an arm's  
6 length of David Diaz.

7 A. It was myself, and the closest people I seen  
8 was Richard and Slim, and whoever --  
9 whoever -- whoever that other dude was  
10 fighting with -- with Richard against Slim,  
11 that's it. I don't -- I don't remember seeing  
12 nobody else around, nothing, 'cuz that's --  
13 the entrance behind David was the entrance to  
14 the living room.

15 Q. And the other dude that was fighting with  
16 Slim, was he white, Hispanic, black, Asian?

17 A. I don't know his nationality is.

18 Q. What's his name?

19 A. I don't even know his name.

20 Q. Well, didn't you tell the police that it was  
21 Isaiah?

22 A. No, I didn't. I -- I named that Isaiah was  
23 there, but I didn't say Isaiah was the one who  
24 stood up for me. I don't know who -- who --  
25 who else besides Richard stood up for me.

1 Q. Did you ever describe Isaiah as being a guy  
2 that punched on Slim?

3 A. No, I -- I -- I said he was there, he was  
4 there at the after set, but I didn't say -- I  
5 told him I was -- I didn't know who the second  
6 guy was. I told him it was Richard Torres and  
7 I don't know who else.

8 Q. So besides you, David, Slim and Vato, there's  
9 another guy?

10 A. Yes.

11 Q. Okay. And that's a Hispanic guy?

12 A. I don't know who he is. I don't know.

13 Q. You don't remember if he was white, black or  
14 Hispanic?

15 A. I don't remember exactly.

16 Q. You sure it was a guy?

17 A. Yes, 'cuz the girls were together in the  
18 living room.

19 Q. Okay. So you can see him sort of in your mind  
20 that it's a guy, not a woman?

21 A. Yes.

22 Q. Okay. And what race is he, in your mind?

23 A. Like I said, I can't -- I don't know. I can't  
24 say 'cuz I ain't sure about it.

25 Q. Okay. Well, was he a real, real fat guy?

1 A. No, he was average guy like me.

2 Q. Average guy like you. Could you stand up for  
3 a minute. And I want you to step down here  
4 and I want you to point your arm straight out  
5 right there. I'm going to mark that on the  
6 wall. That's a red line here, sort of -- is  
7 it all right if I write on the wall like that,  
8 Judge?

9 THE COURT: Well, it's a little  
10 late now, Mr. Griffin.

11 ATTORNEY GRIFFIN: Sorry. Before  
12 I put his initials next to it let me get a  
13 sticky and I'll put his initials next to it.

14 BY ATTORNEY GRIFFIN:

15 Q. We'll put Jeranek Diaz right there. Okay?

16 A. Yes.

17 Q. Okay. Okay. Now go ahead. You can take the  
18 seat. Do you know how tall Slim is?

19 A. No, I don't.

20 Q. Well, give it your best estimate.

21 A. Like six nine, six ten, seven foot.

22 Q. Would you refer to him as pretty damn tall?

23 A. Yeah, I know he's tall.

24 Q. And who else in that party was as tall as him?

25 A. I don't know.

1 Q. Well, at the moment of the shooting, besides  
2 Slim, it's all Hispanic guys, right, except  
3 for the one guy who you don't who was there,  
4 who you don't know, who wasn't Isaiah, whose  
5 race you can't remember, but who you're sure  
6 was a guy; right?

7 A. Yes.

8 Q. Okay. Were -- was any of those guys even  
9 close to his height?

10 A. Well, there was all different kind of guys,  
11 but I can't remember if they were all high or  
12 not as tall as him though.

13 Q. Right at the moment of the shooting, within an  
14 arm's length of David Diaz was there anyone as  
15 close to -- as tall as this guy?

16 A. No.

17 Q. Everyone was more around your height, other  
18 than Slim?

19 A. Most likely.

20 Q. Do you know how tall David was?

21 A. Shorter than me, like my height.

22 Q. What about Richard Torres?

23 A. He's like me.

24 Q. And what about the -- the black, white,  
25 Hispanic unknown male?

1 A. I don't remember.

2 Q. I mean, do you remember him being like, whoa,  
3 like Slim?

4 A. No.

5 Q. This -- you came down here one other time a  
6 couple months ago?

7 A. In January.

8 Q. Yeah, and you talked to Detective Schuler,  
9 didn't you, about this statement that Mr. Kohl  
10 took?

11 A. Oh, I don't know. He talked to me but I -- I  
12 don't remember, he was -- he -- he did come  
13 and talk to me after whatever happened in  
14 here, we talked out there.

15 Q. No, but I mean, didn't he ask you -- I'm going  
16 to show you Exhibit 49, didn't Detective  
17 Schuler ask you about that and ask you what  
18 was up with that, and how was it that you're  
19 saying now that Danny wasn't the shooter and  
20 all that, and you told him that wasn't true,  
21 that Slim was the shooter?

22 A. No.

23 Q. You didn't tell him that out in the hallway  
24 out there?

25 A. No.

1 Q. Think about it, Mr. Diaz, you're under oath.  
2 I want you to make sure before you answer  
3 this, remember you're under oath, did you say  
4 anything like that to Detective Schuler ever?  
5 A. I don't recall.  
6 Q. And the guy that came out to talk to you,  
7 Mr. Kohl, did he tell you who he worked for?  
8 A. I don't remember him telling me, I wasn't  
9 paying attention. I just knew he wanted to  
10 talk to me about this homicide case, and I  
11 didn't even want to talk to him about it, you  
12 know.  
13 Q. Well, you knew he wasn't a cop; right?  
14 A. No, I didn't know he was a cop.  
15 Q. Did he -- I'm sorry, Judge.  
16 Did he tell you he was a cop?  
17 A. No, not that I remember.  
18 Q. Did he tell you that he was working for the  
19 defense in this case?  
20 A. I don't know. I don't remember. I remember  
21 him introducing himself to me. I don't  
22 exactly remember what he told me.  
23 Q. Do you remember him telling you that he was  
24 working for Danny Wilber?  
25 A. I don't know. He just said -- I don't recall,

1 I don't recall that.

2 Q. And there's no question, I mean, we all agree  
3 that at that point you told him sort of what  
4 you're saying now, it's only a short  
5 paragraph, but that -- that you basically took  
6 back your statement from the police; correct?

7 A. Right.

8 Q. And did you tell him, what I told the police  
9 was a lie, or I never said those things to the  
10 police? Which was it?

11 A. I never said those things.

12 Q. That's what you told him?

13 A. I suppose.

14 Q. Well, what do you mean you suppose?

15 A. Well, yes, that's what I told him.

16 Q. Which? That I never said those things?

17 A. I never said those things.

18 Q. Okay. So I need to know now, Mr. Diaz, one  
19 more time, did you or did you not say those  
20 things to Detective Schuler? Take a minute  
21 before you answer that, or a second, and think  
22 about what you're about to say and then let me  
23 know. Is it possible you said those things to  
24 Detective Schuler?

25 A. Not -- I didn't say all those things to

1 Detective Schuler.

2 Q. Some of them?

3 A. Well, some of the statement that I -- the  
4 statement, that is correct, but most of them  
5 is not correct.

6 Q. Is there any possibility, possibility that at  
7 some point in your conversation with Detective  
8 Schuler you kind of got confused and said you  
9 did see Slim with the silver handgun with  
10 black grips, but you really didn't mean it?  
11 Is that possible?

12 A. No, it -- it was right the next day and I  
13 hadn't gotten any sleep or ate any food, so  
14 I -- I wasn't properly like with my senses. I  
15 was like shocked out -- shocked out of this,  
16 what had happened to my friend. I ain't never  
17 been involved in something like that. I was  
18 just like traumatized about it, I didn't know  
19 but -- just what happened.

20 Q. So other than Vato, you, Slim and the other  
21 guy, who else could -- was within an arm's  
22 length of David Diaz when he got shot?

23 A. I don't know. I wasn't paying attention to  
24 the other thing. I was just -- like I told  
25 you, I was just looking at what happened to me



1           and, boom, that went off, I wasn't paying  
2           attention nothing else going on in that room.  
3   Q.   Point where you saw smoke.  
4   A.   Right there.  
5   Q.   Right there. Right by David's head?  
6   A.   Right by Dave's head.  
7                    ATTORNEY GRIFFIN: Nothing  
8           further.  
9                    THE COURT: Recross.  
10                   RECROSS EXAMINATION:  
11   BY ATTORNEY CHERNIN:  
12   Q.   Well, Mr. Diaz, earlier you said in  
13           examination by Mr. Griffin that Jay was in the  
14           kitchen somewhere; right?  
15   A.   Yes, he was in there.  
16   Q.   And you said that there was some people that  
17           you didn't know by name that were in the  
18           kitchen; right?  
19   A.   Yes.  
20   Q.   And was one of those people who you didn't  
21           know by name the other guy who was involved in  
22           the fight with Richard and --  
23   A.   That other guy.  
24   Q.   -- and -- and Slim and you, and you don't know  
25           the other guy's name; right?

1     A.    I don't know.  I don't really -- I can't  
2           picture who he was or who he is.

3                   ATTORNEY CHERNIN:  I have no  
4           additional questions.

5                   ATTORNEY GRIFFIN:  Nothing.

6                   THE COURT:  You may step down.  
7           You can just leave that.  Thank you.

8                   Either side going to be recalling  
9           this witness?

10                  ATTORNEY GRIFFIN:  It's possible.

11                  THE COURT:  You remain --  
12       Mr. Diaz.

13                  THE WITNESS:  Yes ma'am.

14                  THE COURT:  What we had discussed  
15       earlier, you remain under the subpoena, that  
16       is the court order to return here for any  
17       further testimony by the State or by the  
18       defense should it become necessary.

19                  THE WITNESS:  Yes.

20                  THE COURT:  All right, sir.

21                  THE WITNESS:  Am I able to leave  
22       now?

23                  THE COURT:  You're able to leave  
24       for right now.

25                  THE WITNESS:  But I won't be

1           needed today later on?

2                       THE COURT:   I don't know, sir.

3                       THE WITNESS:   Do you guys know  
4           where to contact me?

5                       THE COURT:   If you head out the  
6           people for the State will tell you what you  
7           need to do.

8                       (Witness excused.)

9                       THE COURT:   State has leave to  
10          call its next witness.

11                      ATTORNEY GRIFFIN:   Is Officer  
12          Lazo there?   Why don't you have him come in.

13                      THE COURT:   Officer, I'm going to  
14          have you raise your right hand, my clerk will  
15          swear you in.

16                      JOSE LAZO, called as a witness  
17          herein, having been first duly sworn, was  
18          examined and testified as follows.

19                      THE CLERK:   Please be seated.

20                      THE COURT:   Officer, what I'm  
21          going to ask you to do is just move your chair  
22          in as close to the bench as comfortable for  
23          you.   Begin by stating your full name for the  
24          record, spelling your first and last name.

25                      THE WITNESS:   First name is Jose,

1 J-O-S-E, last name is Lazo, L-A-Z-O.

2 THE COURT: You may begin.

3 DIRECT EXAMINATION:

4 BY ATTORNEY GRIFFIN:

5 Q. Sir, what do you do for a living?

6 A. I work for the City of Milwaukee, police  
7 officer.

8 Q. How long have you been on the force?

9 A. A little bit over ten years.

10 Q. On February 1st of last year, 2004, a little  
11 before noon, did you go to 2548 West Forest  
12 Home, looking for Danny Wilber, to arrest him  
13 if he was there?

14 A. Yes.

15 Q. And why did you go to that address?

16 A. 'Cuz that's the last known address where we  
17 know him to live at.

18 Q. When you were there did you speak with a woman  
19 by the name of Jill Neubecker?

20 A. Yes. The upstairs tenant.

21 Q. Yeah?

22 A. Yes.

23 Q. Okay. And did she give you some information  
24 about something that I guess you might call  
25 unusual, although she might not, but unusual

1 about something going on in her back yard?

2 ATTORNEY CHERNIN: Objection.

3 Leading. And I anticipate this is eliciting a  
4 hearsay response.

5 THE COURT: Well, overruled on  
6 the objection of hearsay, but it is leading.  
7 Rephrase, Mr. Griffin.

8 BY ATTORNEY GRIFFIN:

9 Q. Did Ms. Neubecker provide you with information  
10 about something that had occurred at her  
11 residence the night before, meaning what would  
12 have been the night of January 31st?

13 A. Yes, she -- she stated to me --

14 ATTORNEY CHERNIN: Objection.

15 He's --

16 THE COURT: On hearsay?

17 ATTORNEY CHERNIN: On hearsay,  
18 yes.

19 THE COURT: Overruled. I'll  
20 allow it.

21 A. She stated to me that that night, the night  
22 before or early that morning, she smelled  
23 smoke coming from her back yard.

24 BY ATTORNEY GRIFFIN:

25 Q. Was she able to describe for you at all

1 anything beyond smoke, what that particular  
2 smoke smelled like?

3 ATTORNEY CHERNIN: Objection.  
4 Calls for hearsay.

5 THE COURT: I'll note your  
6 running objection. Overruled. You may  
7 answer.

8 A. She said that it was a -- it wasn't your  
9 regular smoke, but she smelled something of  
10 like clothing burning. Stuff like -- like  
11 that.

12 BY ATTORNEY GRIFFIN:

13 Q. And did she indicate to you where that was  
14 happening?

15 A. From the smoke she said it was coming from her  
16 back yard. From a grill.

17 Q. Did she indicate to you, when you say clothing  
18 or something, did she use that word?

19 A. She -- she used clothing.

20 Q. She didn't tell you something like, I don't  
21 know what it was, Officer, it was just an odd  
22 smell, I couldn't tell if it was clothes or --  
23 or something --

24 A. She said it was clothing or something, but it  
25 wasn't your regular grill smoke.

1 Q. She didn't say it smelled like someone had  
2 burned brats or a steak or sword fish; right?

3 A. Right.

4 ATTORNEY GRIFFIN: Nothing  
5 further.

6 THE COURT: Cross.

7 CROSS EXAMINATION:

8 BY ATTORNEY CHERNIN:

9 Q. Officer Lazo, is it true that you did this  
10 investigation in February of 2004 when you --  
11 when you met with Ms. Neubecker?

12 A. Yes.

13 Q. Is it true that you didn't write a report  
14 about that involvement with Ms. Neubecker  
15 until December 11th of 2004?

16 A. Correct.

17 Q. Ten months later?

18 A. Yes.

19 Q. Did you write any earlier reports about that?

20 A. No, I relayed that message to another police  
21 officer.

22 ATTORNEY CHERNIN: I have no  
23 further questions of this witness.

24 REDIRECT EXAMINATION:

25 BY ATTORNEY GRIFFIN:

1 Q. Why was that, Officer? What was it about  
2 Ms. Neubecker that you didn't make that  
3 information public right away?

4 A. Well, we were checking the residence, but I --  
5 I -- when I got back to the -- to the downtown  
6 area I mentioned it to another officer, that  
7 she had mentioned that there was a -- a -- a  
8 smoke or coming -- or some type of thing  
9 coming from the -- from the back yard over her  
10 house.

11 Q. Did she wish to remain anonymous about that  
12 information?

13 ATTORNEY CHERNIN: Objection.  
14 This calls -- clearly calls for hearsay.

15 THE COURT: Overruled. I'll  
16 allow it.

17 A. Yeah, she didn't -- she didn't want no part.

18 BY ATTORNEY GRIFFIN:

19 Q. Did she explain to you why?

20 A. No, she didn't. She just said she didn't want  
21 to be involved in this.

22 Q. And when people don't want to be involved but  
23 give you information, do you try to protect  
24 their anonymity if you can?

25 A. Yes.



1 Q. And what happened in December was you were  
2 told, okay, you gotta give up her name now; is  
3 that right?

4 A. Correct.

5 ATTORNEY GRIFFIN: Nothing  
6 further.

7 THE COURT: Recross.

8 ATTORNEY CHERNIN: Nothing.

9 You may step down, Officer.

10 (Witness excused.)

11 THE COURT: State may call its  
12 next witness.

13 ATTORNEY GRIFFIN: Call Richard  
14 Torres.

15 (Side bar.)

16 THE COURT: Detective, raise your  
17 right hand and my clerk will swear you in.

18 KENT CORBETT, called as a witness  
19 herein, having been first duly sworn, was  
20 examined and testified as follows.

21 THE CLERK: Please be seated.

22 THE COURT: I'm going to ask you  
23 to start out by stating your full name.  
24 You're clearly not Richard Torres, so would  
25 you state your full name and spell your first

1           and last name for the record.

2                       THE WITNESS:   Kent Corbett.

3           K-E-N-T, C-O-R-B-E-T-T.

4                       THE COURT:   Thank you.   You may  
5           begin.

6                       DIRECT EXAMINATION:

7   BY ATTORNEY GRIFFIN:

8   Q.   Sir, what do you do for a living?

9   A.   I'm a detective with the City of Milwaukee  
10       Police Department currently assigned to the  
11       Homicide Unit.

12   Q.   How long have you been on the force, how long  
13       have you been a detective?

14   A.   I've been on the police force for 15 years and  
15       a detective for about 8 years, a little over 8  
16       years.

17   Q.   I'm going to show you what's been marked as  
18       Exhibit 31.   Do recognize it?

19   A.   Yes.

20   Q.   What is it?

21   A.   It's a photocopy of a statement that I took  
22       from Donald Jennings.

23   Q.   Is it missing a page from its original?   In  
24       other words, a sketch of the scene?

25   A.   Yes, it is.

1 Q. I'm going to show you another exhibit that's  
2 been marked 38. Do you recognize that?  
3 A. Yes.  
4 Q. What is Exhibit 38?  
5 A. That's the original sketch that should have  
6 been attached to the original statement that I  
7 took of Donald Jennings.  
8 Q. The first exhibit that I showed you is  
9 actually a photo of the original that's kept  
10 in what's called the -- the M File that the  
11 Milwaukee Police Department keeps for each  
12 homicide; correct?  
13 A. Correct.  
14 Q. And the other Exhibit 38 is the actual  
15 original from that file, because it has red  
16 ink and black ink that doesn't transfer over  
17 to the photo; right?  
18 A. That's correct.  
19 Q. Okay. I want to talk first about the  
20 statement itself, which I think is 31?  
21 A. Yes.  
22 Q. Is that a fair and accurate summary of what  
23 Donald Jennings told you about all of this?  
24 A. Yes, it is.  
25 Q. Okay. And the other exhibit, 38, that

1 particular exhibit, in addition to being a  
2 hand drawn sketch of the scene, has initials  
3 all over it; correct?

4 A. Yes, it does.

5 Q. What was the purpose of that document and what  
6 was it used for in your conversation with  
7 Donald Jennings?

8 A. During my interview with Donald Jennings, to  
9 be able to understand where some of the people  
10 that attended this party, if you will, at the  
11 house, to be able to understand where they  
12 were situated just before and during the  
13 shooting incident. I had him point to areas  
14 where specific people were, and once he did  
15 indicate where so and so was, I put the  
16 corresponding initials to that individual.

17 Q. For example, there are initials on there, DJ;  
18 correct?

19 A. Yes.

20 Q. And those are sort of by what would be the  
21 sink of the kitchen?

22 A. Yes.

23 Q. And who's that supposed to represent?

24 A. Donald Jennings.

25 Q. And did you yourself put that D -- the

1           initials DJ there?

2    A.    Yes, I -- I wrote that there.

3    Q.    And was that at your direction, his direction,

4           your partner's direction?  Who said, put the

5           initials DJ there to show that that's where

6           Donald Jennings was?

7    A.    That was at Donald's Jennings' direction.  He

8           pointed to that spot and that's where I put

9           the initials.

10   Q.    The different initials that are on that page

11          are AW, DW, ON, and different things like

12          that; correct?

13   A.    Yes..

14   Q.    And there's, for example, two sets of

15          initials, DW, one in black, one in red?

16   A.    Correct.

17   Q.    Were any of those initials on that page when

18          you first put it in front of Donald Jennings?

19   A.    No.

20   Q.    Didn't you in fact have all those initials on

21          there and everybody where you wanted them and

22          then just got him to say, yeah, yeah, that's

23          where everybody was?  Is that how it went?

24   A.    No.

25   Q.    How did it go?

1 A. I asked him where Oscar Niles was, for  
2 example, and he would point on the sheet,  
3 right here, and then that is where I put  
4 initials for Oscar Niles. And we went down  
5 for as many people that he could remember that  
6 he knew the names of that were in the kitchen  
7 at the time that this happened, that's the  
8 initials I -- I put the initials to the  
9 corresponding spots when he pointed to them.  
10 There's even a spot on there with an X that  
11 just -- he says, well, I don't know who -- I  
12 don't know who this -- this guy was, but he  
13 was standing right here. So I used that, an  
14 X.  
15 Q. Why are the initials DW on there twice?  
16 A. Before and during the shooting. Two different  
17 spots.  
18 Q. According to Donald Jennings, the way he  
19 explained it to you, who were the people in  
20 the immediate vicinity of the victim during  
21 the shooting?  
22 A. Danny Wilber and Jeranek Diaz.  
23 Q. At the -- underneath where the red initials  
24 are, there's sort of some arrows pointing?  
25 A. Yes.

1 Q. What are those?

2 A. That indicates where he said that other people  
3 started coming into the kitchen, and I wrote  
4 the word 'others' by those arrows.

5 Q. Was he able to explain to you, for example,  
6 how it was that since he was at the sink he  
7 could see back into the living room?

8 A. No, no, I don't think he was indicating that  
9 he could see into the living room. It's just  
10 that's where the doorway leading from the  
11 doorway to the kitchen was, and that's where  
12 he could see people coming into the kitchen  
13 from the living room.

14 Q. I want to talk for a minute as well about how  
15 that diagram got created in terms of when the  
16 interview started, when it ended, when that  
17 happened. What date did you interview  
18 Mr. Jennings?

19 A. On September 14th of 2004.

20 Q. September?

21 A. I'm sorry, March. I'm sorry.

22 Q. March 14th of '04?

23 A. That's correct.

24 Q. What time did the interview start, what time  
25 did it end?

1 A. It started at 7:49 p.m. and ended at  
2 10:59 p.m.

3 Q. Was it difficult to get Mr. Jennings to talk  
4 to you?

5 A. I wouldn't say difficult.

6 Q. What would you say?

7 A. Well, he would talk, he -- he would speak to  
8 us and talk to us, whether or not he was  
9 telling the entire truth at the time, and --  
10 and so that might have taken a little time for  
11 him to get it out, but he got it out.

12 Q. What he wanted you -- what he told you finally  
13 was the truth was different from what he was  
14 telling you at the beginning of the interview,  
15 to some degree?

16 ATTORNEY CHERNIN: Objection to  
17 the characterize. This is vouching for the  
18 credibility of another witness.

19 THE COURT: Overruled. I'll  
20 allow it. Rephrase the question because it is  
21 leading.

22 ATTORNEY GRIFFIN: Sure.

23 BY ATTORNEY GRIFFIN:

24 Q. Let's not use the word the truth, let's say  
25 like final statement, what he wanted to tell



1           you. Was he saying things different, say in  
2           the last hour than in the first hour, to some  
3           degree or not?

4    A.    I think that would be fair to say.

5    Q.    Did you provide Mr. Jennings at the end of the  
6           statement with an opportunity to sign  
7           anything?

8    A.    Yes.

9    Q.    And when did that come up?

10   A.    After I wrote the statement out, after we went  
11          through it together and I wrote the statement  
12          out I read it back to him as he was there,  
13          gave him the opportunity to read along if he  
14          cared to, and at the end I asked if the  
15          statement that we had just gone over was the  
16          truth and if it was correct. And he said it  
17          was. Then I put a -- an X at the end of the  
18          statement.

19   Q.    On what page?

20   A.    Be on page 9 -- I'm sorry, on page 8 of 8, and  
21          asked him if he would care to sign it, and he  
22          said he didn't want to sign it. He says, I  
23          don't sign papers.

24   Q.    Now, at some point before that moment was  
25          there a question about when he had ever

1           seen -- if he had ever seen Mr. Wilber with a  
2           gun before?

3    A.   No.  No, we did not ask him that question,  
4           until I asked him if he wanted to sign this.

5    Q.   How did that happen then?

6    A.   After we were finished and I -- and I asked  
7           him if he signed it, then before we left the  
8           room, I think my partner was the one that  
9           asked him, hey, had you ever seen Danny Wilber  
10          with a gun before.  Just as a -- like just an  
11          additional question that we failed to ask him  
12          during the bulk of the interview.

13   Q.   Had he already declined to sign, what would be  
14          called the first eight pages of the statement?

15   A.   Yes.

16   Q.   And that -- that part about where you asked  
17          him about Mr. Wilber ever having a gun is  
18          actually added in sort of at the bottom of  
19          page 8; correct?

20   A.   Yes.

21   Q.   And did you give him an opportunity to sign a  
22          summary of that question and his answer?

23   A.   Yes.

24   Q.   And what did he say?

25   A.   He says no.

1 Q. When in the course of this interview was the  
2 diagram done, the sketch where you were  
3 placing initials in to represent where the  
4 different people were according to what  
5 Mr. Jennings told you?

6 A. Sometime in the -- in the middle of the  
7 interview, while the interview was still  
8 taking place and before I actually wrote the  
9 statement out.

10 Q. I'm going to show you what's been marked as  
11 Exhibit 39. Do you recognize that?

12 A. Yes.

13 Q. What is it?

14 A. It's a photocopy of the original diagram that  
15 I made during the interview with Donald  
16 Jennings.

17 Q. You would agree that on that exhibit there's  
18 no red ink anywhere?

19 A. Correct. It's just black and white.

20 Q. Did you in fact present that document to  
21 Mr. Jennings the way it is there and then  
22 later after he was gone take a red pen and add  
23 in some red things on there?

24 A. No.

25 ATTORNEY GRIFFIN: Could I just

1           have a second, Judge?

2                       THE COURT:   You may.

3   BY ATTORNEY GRIFFIN:

4   Q.   Did Mr. Jennings, in the time you were with  
5       him, ask for anything that you didn't give  
6       him?  You know, food, rest, water, anything  
7       like that?

8   A.   No.

9   Q.   Or were any creature comforts given?

10  A.   I believe so.  He was given a -- a restroom  
11       break, but he didn't ask for anything else.

12  Q.   And what happened when you were done with  
13       him?  He was -- he was in custody on an  
14       unrelated warrant; correct?

15  A.   I believe so, yes.

16  Q.   Okay.  It's fair to say that Mr. Jennings did  
17       not call you or anyone from the Department and  
18       say, hey, I gotta tell you what happened here,  
19       man, and then he came in or you went and got  
20       him or anything like that?

21                    ATTORNEY CHERNIN:  Well, I'm  
22       going to object to the form of the question.  
23       How would this -- 906.02.

24                    THE COURT:  State your objection.

25                    ATTORNEY CHERNIN:  Lack of

1       personal knowledge. As this officer can  
2       clearly indicate whether Mr. Jennings called  
3       him, but as to whether he called any other  
4       officer, that's Mr. Griffin's question.

5                   THE COURT: Rephrase. He can  
6       certainly ask him whether or not he knows if  
7       that happened.

8                   ATTORNEY GRIFFIN: I'll withdraw  
9       it, Judge.

10                  THE COURT: Question's withdrawn.

11                  ATTORNEY GRIFFIN: Nothing  
12       further.

13                  THE COURT: Cross.

14                  CROSS EXAMINATION:

15   BY ATTORNEY CHERNIN:

16   Q.   Now, Detective Jennings -- I'm sorry,  
17       Detective Corbett, this is Mr. Jennings'  
18       statement. Prior to coming to court here  
19       today, did you have the opportunity to review  
20       the statement that you took from Mr. Jennings?

21   A.   Yes.

22   Q.   So -- and you did that for the purpose of  
23       allowing you to answer questions that were  
24       posed to you about that statement from  
25       Mr. Griffin; correct?

1 A. Yes.

2 Q. Did you give Mr. Jennings the opportunity to  
3 review his statement prior to him coming in to  
4 court to testify earlier in these proceedings?

5 A. I did not.

6 Q. Now, in the entire course -- oh, you had this  
7 conversation with Mr. -- during the time that  
8 you had this conversation with Mr. Jennings,  
9 did he ever tell you that David Diaz was  
10 behind -- or I'm sorry, that Danny Wilber was  
11 behind David Diaz?

12 A. I don't recall if he said that.

13 Q. Well, you don't reflect that in your  
14 statement, Exhibit 31; do you?

15 A. I don't believe so.

16 Q. And in the diagram, Exhibit 38 I believe it  
17 is; is that correct?

18 A. Yes.

19 Q. In that diagram that's not to scale; is it?

20 A. No.

21 Q. And in the area that it shows Danny Wilber, I  
22 think the legend that you have says -- well,  
23 there's several -- the legends indicates Danny  
24 Wilber during the shooting; is that correct?

25 A. Yes, that's written in red.

1 Q. Okay. And when Danny Wilber -- according to  
2 Mr. Jennings, where Danny Wilber was located  
3 during the shooting was in front of David  
4 Diaz; correct?

5 A. Yes.

6 Q. Although David Diaz could have been turned  
7 around and facing the living room, I mean  
8 according to the diagram, it's not clear what  
9 direction David Diaz was facing; right? Am I  
10 correct?

11 A. That's true.

12 Q. But you took it to understand that David Diaz  
13 was facing the kitchen, because that's what he  
14 said in the statement; correct?

15 A. Yes.

16 Q. And so you understood that and you understood  
17 that Danny Wilber, according to what  
18 Mr. Jennings was telling you, was facing David  
19 Diaz; correct?

20 A. Yes.

21 Q. So you went through a bunch of other items  
22 with Mr. -- I'm sorry, a bunch of different  
23 questions with Mr. Jennings about who was  
24 located within that kitchen; correct?

25 A. Yes.

1 Q. And in fact, there was an X there; right? And  
2 that indicates an unknown Hispanic male?  
3 A. Yes.  
4 Q. Did you ask Mr. Jennings where that unknown  
5 Hispanic male was at the time of the shooting  
6 or during the shooting? Because he's not --  
7 that X is never moved in red; is it?  
8 A. No.  
9 Q. And the red is to indicate where people were  
10 during the time of the shooting; correct? Is  
11 that correct?  
12 A. Well, where two people were, yes.  
13 Q. Okay.  
14 A. Not necessarily where everyone was..  
15 Q. Okay. But no one -- you weren't really  
16 concerned where everyone else was, you just  
17 asked about where Danny Wilber and David Diaz  
18 were; correct?  
19 A. Yes.  
20 Q. And you don't know where X, the unknown  
21 Hispanic male, was; do you?  
22 A. At the time of the shooting?  
23 Q. At the time of the shooting.  
24 A. No.  
25 Q. And so he could have been involved in that



1 fight as well; correct?

2 A. I had no information to -- to indicate that

3 from anyone.

4 Q. You never asked Jeranek Diaz where that

5 unknown Hispanic male was; did you? Or you

6 didn't?

7 A. No.

8 Q. And during the course of your interview with

9 Mr. Jennings, he indicated that the shot came

10 from a vantage point outside of his viewing

11 area; correct?

12 A. He mentioned there was some obstruction with

13 some kitchen cabinets.

14 Q. Okay. Have you been inside of 1128 West

15 Mineral?

16 A. Yes.

17 Q. And I'll show you what's been marked as

18 Exhibit 14. Are those the kitchen cabinets to

19 which he was referring?

20 A. Yes.

21 Q. And so according to Mr. Jennings -- if you can

22 hold this so the jury can see it too --

23 according to Mr. Jennings, Mr. Jennings on the

24 diagram is in front of the kitchen sink;

25 correct? Am I correct?

1 A. Not directly in front of it, but near it, yes.

2 Q. And his view is obstructed of items or what's

3 occasioned to be happening to his right;

4 correct?

5 A. Yes.

6 ATTORNEY GRIFFIN: Are we talking

7 about in the kitchen?

8 ATTORNEY CHERNIN: In the

9 kitchen, yes.

10 BY ATTORNEY CHERNIN:

11 Q. So that -- and Mr. Jennings tells you that he

12 cannot see where the shot was fired from;

13 correct?

14 A. Well, he's saying his -- his -- his view is

15 partially obstructed to his right.

16 Q. To his right?

17 A. But that's where the shot came from.

18 Q. And that's where the shot came from, from the

19 area from which his view is obstructed;

20 correct?

21 A. Partially obstructed, yes.

22 Q. Okay. And Mr. Jennings never tells you that

23 he sees his cousin Slim engaged in the

24 shooting; correct? Am I correct in that

25 regard?

1 A. Yes.

2 Q. And so Mr. Jennings had told you and that --  
3 and when you go through the statement, and the  
4 final statement, and -- and if you ask him if  
5 this is true and correct, what you now know to  
6 be true and correct is that Donald Jennings  
7 could not see who the shooter was, that's one  
8 of the things that he says is true and  
9 correct, and you say is true and correct;  
10 right?

11 ATTORNEY GRIFFIN: I'm going to  
12 object. The detective's not saying that's  
13 true and correct. He can't.

14 ATTORNEY CHERNIN: Well, his  
15 report indicates that what he's saying is what  
16 is reported is true and correct.

17 THE COURT: Ask him it that way  
18 then.

19 BY ATTORNEY CHERNIN:

20 Q. Okay. Are you saying that what your report  
21 says is true and correct?

22 ATTORNEY GRIFFIN: I object to  
23 the form of that question.

24 THE COURT: Sustained.

25 ATTORNEY GRIFFIN: In what way?

1 THE COURT: Sustained.

2 Rephrase.

3 BY ATTORNEY CHERNIN:

4 Q. What does it mean on your document when you  
5 say something is true and correct?

6 A. I'm asking if the -- in this case, if Donald  
7 Jennings agrees that this is true and correct.

8 Q. And what he's telling you is true and correct  
9 is that his view is partially obstructed and  
10 that he cannot see -- he did not see the  
11 shooter; correct?

12 A. Correct.

13 Q. And that his cousin Slim was not the shooter;  
14 correct?

15 A. I don't -- I don't -- no, the statement does  
16 not say that Slim was not the shooter, he just  
17 said that he didn't see the shooter.

18 Q. And he -- but if he couldn't see the shooter  
19 then and he told you where Slim was standing,  
20 'cuz from what you said he could see Slim  
21 during the shooting, isn't it just the logical  
22 conclusion that if he couldn't see the shooter  
23 but he could see and tell you where Slim was  
24 during the shooting, that Slim was not the  
25 shooter?

1                   ATTORNEY GRIFFIN: I'm going to  
2           object to that question.

3                   THE COURT: Sustained.

4 BY ATTORNEY CHERNIN:

5 Q. You asked Mr. Jennings the question where Slim  
6       was during the shooting; correct?

7 A. Yes.

8 Q. And he's able to indicate on that diagram  
9       where Slim is; correct?

10 A. Yes.

11 Q. And the way that he can do that is because he  
12       must have been able to see where Slim was;  
13       correct? Otherwise he wouldn't be able to  
14       tell you where he was; right?

15                   ATTORNEY GRIFFIN: Well, I'm  
16       going to object to that as well. That calls  
17       for a conclusion that this detective can't  
18       make.

19                   THE COURT: Sustained.

20                   ATTORNEY CHERNIN: Thank you. I  
21       won't go any further. Thank you.

22                   THE COURT: Redirect.

23                   REDIRECT EXAMINATION:

24 BY ATTORNEY GRIFFIN:

25 Q. Detective, page 6 of 8 of Exhibit -- is it 31?

1 A. Yes.

2 Q. Very middle of the page, Torres appeared that  
3 he -- Torres was going to break up the fight  
4 between Wilber and Jeranek. Do you see that?

5 A. Yes.

6 Q. And Wilber, what's the next sentence?

7 A. Stated that Wilber had his back --

8 ATTORNEY CHERNIN: I'm going to  
9 object. Are you asking the detective to read  
10 what's in the report or are you asking him a  
11 question about the report?

12 THE COURT: Do you have an  
13 objection?

14 ATTORNEY CHERNIN: Yes.

15 THE COURT: I assume you're  
16 directing that at me, you're asking me to make  
17 a ruling here, right, because that's who would  
18 have to make the ruling, right. So phrase  
19 your objection please.

20 ATTORNEY CHERNIN: Then -- then  
21 it's an improper form of impeachment, if  
22 that's what he's attempting to do.

23 THE COURT: It's not an improper  
24 form of impeachment, but I'm going to sustain  
25 it on other grounds. Rephrase, Mr. Griffin.

1 BY ATTORNEY GRIFFIN:

2 Q. At the moment of the shot, what did

3 Mr. Jennings tell you his position was

4 relative to Mr. Wilber and what part of

5 Mr. Wilber's body he could see?

6 A. He said he was standing -- he meaning

7 Jennings -- was standing near the kitchen

8 sink, and that Wilber was to his right near

9 the entrance of the kitchen from the living

10 room.

11 Q. Did he tell you that Wilber had his back

12 towards him at that point?

13 A. Yes. Him meaning Jennings.

14 Q. Correct. That at that point he's going

15 through the -- we're now talking really the

16 moments before the shot goes off; correct?

17 A. That's correct.

18 Q. Did he tell you that Wilber had his back

19 towards him?

20 A. Yes.

21 Q. That he didn't see anyone with any guns at

22 that point, but he heard a shot?

23 A. That's correct.

24 Q. So according to Donald Jennings, what he told

25 you was at the moment of the shot Danny

1 Wilber's back was to him?

2 A. Correct.

3 ATTORNEY GRIFFIN: Nothing

4 further.

5 THE COURT: Cross.

6 ATTORNEY CHERNIN: I have no

7 additional questions.

8 THE COURT: Detective, you may

9 step down.

10 THE WITNESS: Thank you.

11 (Witness excused.)

12 THE COURT: Ladies and gentlemen,

13 we'll take our afternoon recess, we'll be back

14 on the record in -- at five minutes to the

15 hour of three.

16 DEPUTY: All rise for the jury

17 please.

18 (Jury out of box.)

19 THE COURT: You may be seated.

20 Mr. Griffin, you had indicated

21 yesterday at the end of the day that -- from

22 my notes that the remaining witnesses are on

23 your list, that is Detectives Schuler, Burgos,

24 Gastrow, Villarreal, Duffy and Michael

25 Caballero, that's six, and citizen witnesses



1 Richard Torres, that's seven witnesses that  
2 you have left. Whom do you anticipate calling  
3 yet this afternoon?

4 ATTORNEY GRIFFIN: I would -- I  
5 just may be calling Richard Torres, and  
6 Detective Schuler is on his way in from out of  
7 town, which isn't far, it's Madison. I know  
8 he's driving here now, so he thought he would  
9 be here about 4:00, so -- so even if I needed  
10 to interrupt Mr. Torres, Detective Schuler is  
11 leaving town, I think Monday morning leaving  
12 the State, so I'd like to get --

13 THE COURT: You're talking about  
14 Rich Torres and Detective Schuler?

15 ATTORNEY GRIFFIN: Correct.

16 THE COURT: And then what would  
17 be left for Monday?

18 ATTORNEY GRIFFIN: Villarreal,  
19 Mike Caballero, Burgos --

20 THE COURT: Gastrow and Duffy?

21 ATTORNEY GRIFFIN: -- Gastrow,  
22 Duffy, if we can't work out a stipulation I'd  
23 have Officer Collado as well. But I don't  
24 know if ultimately -- well, I have nothing  
25 further.

1 THE COURT: All right. We're  
2 going to take our break. We'll be back on the  
3 record at 3:00 o'clock.

4 (Break taken.)

5 DEPUTY: All rise for the jury.

6 (Jury in box.)

7 THE COURT: You may be seated.

8 State has leave to call its next witness.

9 ATTORNEY GRIFFIN: Richard

10 Torres.

11 THE COURT: Mr. Torres, I'm going  
12 to have you remain standing. Raise your right  
13 hand and my clerk will swear you in.

14 RICHARD TORRES, called as a  
15 witness herein, having been first duly sworn,  
16 was examined and testified as follows.

17 THE CLERK: Please be seated.

18 THE COURT: Mr. Torres, what I'm  
19 going to ask you to do is to pull that chair  
20 in directly into the bench in front of you,  
21 use the microphone and have it at a level  
22 that's comfortable for you to speak into.  
23 Speak up loud and clear, begin by stating your  
24 full name for the record, spelling your first  
25 and last name.

1 THE WITNESS: Richard Torres.  
2 T-O-R-R-E-S.  
3 THE COURT: You may begin.  
4 DIRECT EXAMINATION:  
5 BY ATTORNEY GRIFFIN:  
6 Q. Mr. Torres, how old are you?  
7 A. I'm 33 years old.  
8 Q. And what part of town do you live in?  
9 A. Milwaukee.  
10 Q. North side, south side, east side, west side?  
11 A. South side.  
12 Q. What do you do for a living?  
13 A. I'm a student.  
14 Q. Where at? What are you studying, I guess is a  
15 better way.  
16 A. Studying for high school equivalence.  
17 THE COURT: High school  
18 equivalency test?  
19 A. Yes.  
20 BY ATTORNEY GRIFFIN:  
21 Q. You mean your HSED?  
22 A. Yes.  
23 Q. How long have you lived in Milwaukee?  
24 A. Most of my life.  
25 Q. Have you ever been convicted of a crime?

1 A. Yes.

2 Q. How many times?

3 A. Eight times.

4 Q. On January 31st of last year, 2004, were you  
5 in the kitchen there on West Mineral when  
6 David Diaz got shot?

7 A. Yes.

8 Q. At the time David Diaz got shot, either in the  
9 moments immediately before or immediately  
10 after or during, did you see anyone with a  
11 gun?

12 A. Yes.

13 Q. Who was that?

14 A. Slim.

15 Q. When you say Slim, the guy you call Slim,  
16 that's a nickname?

17 A. Yes, it's a nickname.

18 Q. And do you see that guy in court today?

19 A. Yes, I do.

20 Q. Can you point him out by where he's sitting  
21 and what he's wearing?

22 A. Blue sweater or shirt.

23 Q. And you also pointed; correct?

24 A. Correct.

25 ATTORNEY GRIFFIN: May the record

1 reflect the witness has identified the  
2 defendant by description and by pointing.

3 THE COURT: It does.

4 BY ATTORNEY GRIFFIN:

5 Q. Before that day had you ever seen the  
6 defendant?

7 A. No.

8 Q. Were you aware of Mr. Diaz, Jeranek Diaz,  
9 selling him an old Cadillac, a used Cadillac  
10 about a year or so before?

11 A. Yeah, he told me about it. No, I know who he  
12 was.

13 Q. Jeranek Diaz, you know him; right?

14 A. Yes.

15 Q. What's his nickname?

16 A. Rocky.

17 Q. Rocky? Do some people call him Rock?

18 A. Rock, yes.

19 Q. What's your nickname?

20 A. Vato.

21 Q. Is that V-A-T-O?

22 A. V-A-T-O.

23 Q. I'm going to show you some photographs, first  
24 I'm going to show you Exhibits 8 and 9. This  
25 is 8 and this is 9. Take a look at 'em.

1           Who's in those pictures?

2    A.    This is myself.

3    Q.    I'm going to ask you to -- it's a little bit  
4           far from the jury, but over here on the side  
5           of your -- your -- what would be your left  
6           eye, in both of these pictures there appear to  
7           be some kind of reddening on them, what's that  
8           from?

9    A.    I was hit in the eye twice.

10   Q.    By who?

11   A.    By Slim.

12   Q.    When you say you were hit in the eye twice, do  
13           you mean you were hit in the left eye?

14   A.    Yes.

15   Q.    And was getting hit by the defendant twice,  
16           did that leave those marks on your face?

17   A.    Correct.

18   Q.    You've been in fights before in your life;  
19           haven't you?

20   A.    Correct.

21   Q.    How many?

22   A.    Quite a few.

23                   ATTORNEY CHERNIN:  I'm sorry, I  
24           didn't hear the --

25                   ATTORNEY GRIFFIN:  Quite a few.

1 THE COURT: Quite a few.

2 ATTORNEY CHERNIN: Quite a few.

3 I'm sorry.

4 BY ATTORNEY GRIFFIN:

5 Q. During this -- when you got hit twice by Slim

6 did you get any hits laid on him?

7 A. No.

8 Q. Did Isaiah?

9 A. I think he did.

10 Q. Is Isaiah your friend or Slim's friend?

11 A. Actually he's a friend of Rocky.

12 Q. I'm going to show you a photograph marked

13 Exhibit 20. Well, can you read the number on

14 there? Is it 20 on that sticker?

15 A. Yes.

16 Q. Okay. Exhibit 20, who is that?

17 A. This would be Isaiah.

18 Q. And Isaiah is the guy -- was he also in the

19 kitchen right when David got shot?

20 A. Yes.

21 Q. While we're at it we'll show you a couple more

22 photos. Exhibit 18, do you know that guy?

23 A. Yes.

24 Q. Who is that?

25 A. This is Tony.

1 Q. And is he a friend of yours?

2 A. Yes.

3 Q. And Exhibit 22, do you know that guy?

4 A. Yes.

5 Q. Who's that?

6 A. Friend Jay.

7 Q. Jay?

8 A. Yeah.

9 Q. Is he a friend of yours?

10 A. Yes.

11 Q. Is he also a friend of Slim's?

12 A. Yes.

13 Q. Exhibit 12, do you know that person?

14 A. No.

15 Q. Was -- have you ever seen her before in your  
16 life?

17 A. Yes.

18 Q. When?

19 A. In the kitchen in my friend David's house.

20 Q. When David got shot?

21 A. Right.

22 Q. Do you know who she is now?

23 THE COURT: One moment.

24 Mr. Griffin, I'm going to have you slow down a

25 little bit. Also, Mr. Torres, really remember



1           to keep your voice up, okay, use the mike and  
2           just really remember to speak up loud and  
3           clear into the mike. Go ahead.

4   BY ATTORNEY GRIFFIN:

5   Q.   Exhibit 12, do you know who that is?

6   A.   Yes.

7   Q.   You do. Now, back then did you know who she  
8           was?

9   A.   No, I didn't.

10   Q.   Do you know who she is in relationship to the  
11           defendant?

12   A.   Yes.

13   Q.   Who?

14   A.   His sister.

15                    ATTORNEY GRIFFIN: And for the  
16           record, Judge, 12 is Antonia West.

17   BY ATTORNEY GRIFFIN:

18   Q.   The guy in Exhibit 22 here, the guy you called  
19           Jay, do you know what he is? What his  
20           relationship is to the defendant, if any?

21   A.   Probably an associate.

22   Q.   But not family?

23   A.   No, not family.

24   Q.   Exhibit 19, do you know that gentleman?

25   A.   Yes.

1 Q. What's his name?  
2 A. Javy.  
3 Q. Javy?  
4 A. Yes.  
5 Q. And is he a friend of yours?  
6 A. No.  
7 Q. Okay. But you know him?  
8 A. Associate, yes.  
9 Q. Okay. And is he -- what's his relationship,  
10 if any, to the defendant?  
11 A. I would say associate and friend.  
12 Q. On the night that David -- and let me back up  
13 a minute. David Diaz, what was he to you?  
14 A. Good friend of mine.  
15 Q. He was living at 1128 West Mineral; correct?  
16 A. Correct.  
17 Q. Did he live there with his wife?  
18 A. Yes.  
19 Q. And what was her name?  
20 A. Adriana.  
21 Q. Adriana, but everyone called her --  
22 A. Cindy.  
23 Q. -- Cindy? Were you also living there --  
24 A. Yes, I was.  
25 Q. -- at the time David got shot?

1 A. Yes.

2 Q. Was there anyone else living there besides you

3 three?

4 A. Yes, there was.

5 Q. Who's that?

6 A. Heather.

7 Q. And who is Heather to you?

8 A. A friend.

9 Q. Friend, girlfriend, just friend?

10 A. Just friend.

11 Q. How long had you been living there on West

12 Mineral before David got shot?

13 A. About over half a year.

14 Q. And how long had you known David? In other

15 words, had it been years? A year?

16 A. I met him when he first came from California,

17 which was 1998.

18 Q. The night that he died was actually in the

19 early morning hours of a Saturday; right?

20 A. Yes.

21 Q. That Friday night had you gone out?

22 A. Yes, we had gone out.

23 Q. Where had you gone?

24 A. We went to a few clubs.

25 Q. Was one of them the Macho Lounge or something

1       like that? Do you recall?

2   A.   Yes.

3   Q.   And did you end up at a place called

4       Bacardi's?

5   A.   No, I didn't.

6   Q.   You didn't go to Bacardi's?

7   A.   That's right.

8   Q.   Which one's -- besides the Macho Lounge or

9       whatever, was there another place?

10  A.   A friend of mine, his name is Fernando, was an

11       ex-bouncer at Galaxia, so we decided to go

12       there.

13  Q.   Does Rock know Fernando?

14  A.   No, he doesn't.

15  Q.   Where was Galaxia?

16  A.   It's on 13th and Lincoln.

17  Q.   Do you remember about what time you guys all

18       headed out that night?

19  A.   Yes.

20  Q.   What time?

21  A.   About 10:00 -- 10:30.

22  Q.   Who went? In other words, in the group that

23       you were with initially, when you guys first

24       headed out who was with you?

25  A.   Well, we started out as girl and guy partners,

1           which I was going out with Claudia, and David  
2           was with his wife, and Rocky was accompanying  
3           Heather, and my friend was the only one solo,  
4           which was Fernando.

5   Q.   Did you go to Galaxia first?

6   A.   Yes.

7   Q.   And then where?

8   A.   That was only place we went.

9   Q.   Did you ever get to the Macho Lounge that  
10          night yourself?

11  A.   That was the first place that we went to.

12  Q.   Okay.  Sorry.  Where was the first place you  
13          went to?

14  A.   Was the Macho Lounge.

15  Q.   And then?

16  A.   After that we went to Galaxia, but the other  
17          group of people went to Bacardi Lounge.

18  Q.   Did you yourself ever make it to the  
19          Bacardi's?

20  A.   No, I didn't.

21  Q.   From Galaxia where did you go?

22  A.   From Galaxia we went to the house.

23  Q.   On Mineral?

24  A.   On Mineral.

25  Q.   Was there a plan that day, in other words,

1           when you first left Mineral at say 10:00 or  
2           10:30 was there an idea already in your mind  
3           that after bar time you guys would be all  
4           going back there?  
5    A.    A few people were invited, yes.  
6    Q.    But as is common in those things, the few  
7           people invite a few people who invite a few  
8           people?  
9    A.    Right.   Correct.  
10   Q.    Okay.   Do you remember about what time you got  
11          back to West Mineral?  
12   A.    I'd say about close to 3:00 o'clock.  
13   Q.    How long, as best you recall, from the time  
14          you got back to the time the shooting  
15          happened?   Hours?  
16   A.    About an hour -- maybe about -- just about 45  
17          minutes.  
18   Q.    During that time that you were there, before  
19          the shooting, was there anybody out of control  
20          acting -- that was causing trouble?  
21   A.    Yes.  
22   Q.    Who was that?  
23   A.    That would be Slim.  
24   Q.    Other than Slim anybody?  
25   A.    Other people who were lifting weights.

1 Q. Let's back up with the lifting weight problem  
2 or issue, whatever. What was going on with  
3 that?

4 A. They were having a weightlifting like contest  
5 in the front room, because they seen the  
6 weights down there that we usually work out  
7 with, and I guess they were getting out of  
8 control by slamming 'em on the floor. And at  
9 one time I heard that Adriana got hit with  
10 a -- with a weight or something like that.

11 Q. Adriana is David's wife?

12 A. Wife, yes.

13 Q. Was that what -- was that what ultimately led  
14 to the weightlifting session ending?

15 A. Yes, 'cuz they were told to keep it down or to  
16 leave.

17 Q. So was the defendant one of the guys  
18 weightlifting?

19 A. Yes.

20 Q. If you know.

21 Where were you when all that was  
22 going on?

23 A. I was in the living room and I was -- I went  
24 upstairs for a little while.

25 Q. Who was upstairs?

1 A. At the time it was my girlfriend Claudia and  
2 Dave's wife and a friend Fernando was up in my  
3 room. Also Heather was in the stairway.  
4 Q. Were you -- was there anything before the  
5 weight part of it, the weights and all that,  
6 was there anything -- any particular tension  
7 in the house or anything like that?  
8 A. There had been like tension before from a  
9 different -- like group of people that were  
10 there from a week ago or so. But --  
11 Q. And --  
12 A. -- it was just something that really didn't  
13 bother me at that time.  
14 Q. Were they there again this night?  
15 A. One of the persons was.  
16 Q. Who was that?  
17 A. That would be Ricky.  
18 Q. Do you know his full name?  
19 A. No, I don't.  
20 Q. Is it Jose something? If you know.  
21 A. I'm not sure.  
22 Q. Is he black, white, Hispanic, Asian?  
23 A. Hispanic.  
24 Q. Was he in the kitchen when the shooting  
25 happened?



1 A. No, he wasn't.

2 Q. Was he in the house?

3 A. He was in the house.

4 Q. Where?

5 A. In the living room.

6 Q. The part about the weightlifting, how long  
7 does all that go on?

8 A. About 12 -- 15 minutes.

9 Q. And then is it David then -- David Diaz that  
10 puts the end to all that, that says that's got  
11 stop, or how did that go?

12 A. No, actually he was upstairs and he just  
13 didn't like the crowd being downstairs 'cuz  
14 all the beverages were gone and people started  
15 bringing their own paraphernalia and stuff  
16 like that out.

17 Q. Their own what?

18 A. Like marijuana and stuff out.

19 THE COURT: The word you used  
20 earlier was paraphernalia?

21 THE WITNESS: Yes.

22 THE COURT: Meaning as in drug  
23 paraphernalia?

24 THE WITNESS: Yes.

25 THE COURT: Thank you, sir.

1 BY ATTORNEY GRIFFIN:

2 Q. You'd been out drinking that night; right?

3 A. Correct.

4 Q. How would you describe your level of

5 drunkenness at this point? Extremely, buzzed,

6 in the middle?

7 A. No. Mild. Mild.

8 Q. Do you recall what you were drinking?

9 A. Domestic beer.

10 Q. Like Buds, MGD's, what's your --

11 A. Yeah, basically MGD.

12 Q. Just something brewed here?

13 A. Yes.

14 Q. After the weightlifting thing, what happened?

15 A. Well, after the weightlifting thing, my friend

16 just told everybody to go, he went

17 downstairs. And as I came downstairs behind

18 him there was already an argument inside the

19 kitchen.

20 Q. When you say your friend, who are you

21 referring to that came down the stairs ahead

22 of you?

23 A. David Diaz.

24 Q. Where was Rock?

25 A. Rock was already downstairs in the kitchen.

1 Q. When you came out of those stairs, is the  
2 kitchen then, as you get to the bottom of  
3 those stairs there's the kitchen to your left  
4 or to your right?  
5 A. To the left.  
6 Q. Did you go in the kitchen?  
7 A. Yes, I did.  
8 Q. And what was the cause of the commotion in  
9 there?  
10 A. Slim was arguing with Jay in the kitchen.  
11 Q. Do you know what that argument was about?  
12 A. It was about Jay puffing his chest out at Slim  
13 from other parties, and this particular night  
14 too I guess he was talking with him.  
15 Q. How did that confrontation go?  
16 A. Slim had a -- pulled Jay's chain right off of  
17 his neck.  
18 Q. What kind of chain was it?  
19 A. A silver chain.  
20 Q. Was it one of those, you know, around the neck  
21 kind or one of those ones that hangs down?  
22 A. A little bit long, kind of like midway.  
23 Q. Did you see the defendant grab that chain?  
24 A. Yes, I did.  
25 Q. Do you recall where Jay and the defendant were

1 in the kitchen when that happened?

2 A. Yes.

3 Q. I'm going to ask you to look at this. You can  
4 step off there if you would for a minute and  
5 take a look at it, so that you -- I'm going to  
6 ask you to stand right there so the jury can  
7 still see and hear you.

8 Okay. Do you recognize this as a  
9 sketch of 1128 West Mineral?

10 A. Yes, I do.

11 Q. It's marked as Exhibit Number 1. Have you  
12 ever seen this diagram before today?

13 A. No.

14 Q. Do you recognize the living room sort of at  
15 the south, as you go up on this diagram, what  
16 would be north, the back of the house has the  
17 kitchen?

18 A. Yes.

19 ATTORNEY CHERNIN: Judge, can I  
20 position myself so that I can see?

21 THE COURT: You may.

22 BY ATTORNEY GRIFFIN:

23 Q. I want you to point to the area of the kitchen  
24 where Jay and the defendant were when the  
25 defendant snatched his necklace, as you

1 recall.

2 A. Okay. Jay, these two right around here.

3 Q. And you're pointing again to -- assuming that

4 this square with the two in it is the table,

5 you're talking would be the bottom left-hand

6 corner off that, in the kitchen off that

7 corner of the table?

8 THE COURT: One moment,

9 Mr. Griffin.

10 Make sure you keep your voice up,

11 Mr. Torres.

12 THE WITNESS: Thank you.

13 BY ATTORNEY GRIFFIN:

14 Q. When you saw the defendant and Jay over in

15 this area of the kitchen, if you could point

16 on there where you were.

17 A. I came down at first and I seen 'em do that,

18 so I was over here, but close to the table. I

19 told them to cool off and stuff like that.

20 Jay was over here and he was over here.

21 Q. When you say he was over here --

22 A. Slim. Slim is over here.

23 Q. And you're pointing with the pointer to the

24 area of the kitchen on this diagram just above

25 the letter E where it says kitchen; correct?

1 A. Yes.

2 Q. And before you pointed to where Jay was in the  
3 area of the kitchen off of what would be the  
4 top --

5 A. Top corner.

6 Q. -- top left corner of the table?

7 A. Yes.

8 Q. Where are the stairs that you came down?

9 A. The stairs come back down here.

10 Q. And --

11 A. Behind the kitchen wall.

12 Q. Did you approach the defendant?

13 A. Did I approach him?

14 Q. Yeah.

15 A. I went towards him, yes, I did.

16 Q. What did you tell him?

17 A. I told him to give Jay's shit back.

18 Q. And did you offer any words of advice to the  
19 defendant about how he should behave?

20 A. I just told him he needs to chill out or he  
21 would have to leave.

22 THE COURT: Make sure you keep  
23 your voice up.

24 BY ATTORNEY GRIFFIN:

25 Q. As best you recall, when you come in the

1 kitchen and move towards the defendant, where  
2 is David?

3 A. David is like right by the back door.

4 Q. And what about Rock?

5 A. Rock is right next to him.

6 ATTORNEY GRIFFIN: Do you want  
7 him to -- and me to switch maybe, Judge, since  
8 he's a little quieter, he would be talking to  
9 the reporter.

10 THE COURT: That might be a  
11 better idea.

12 BY ATTORNEY GRIFFIN:

13 Q. Now you're moving over again. You had the  
14 defendant --

15 THE COURT: One moment.

16 Mr. Torres, I'm going to have you  
17 step back a little bit though so that you're  
18 not blocking the view of the jury. Thank you,  
19 sir.

20 BY ATTORNEY GRIFFIN:

21 Q. You have the defendant over by the E in  
22 kitchen sort of; correct?

23 A. Correct.

24 Q. You move toward him and tell him to chill out,  
25 you said that Dave was over by the door, and

1           where was Rock?

2    A.    Rock was right here by the door also.

3    Q.    You're pointing again on this diagram very

4           near what would be on the -- the -- just to

5           the left of the number 11 here, 11 foot 8 on

6           the top right of the chart; correct?

7    A.    Correct.

8    Q.    Okay.  What are Rock and David doing?  As best

9           you recall.

10   A.    They were talking.

11   Q.    When you came toward the defendant what

12           happened next?

13   A.    He started walking over here by David and by

14           Rock, and I guess David had told Rocky to tell

15           Slim to either tell his friends to leave or go

16           home.  So he didn't want to hear that so he

17           went over by Rocky and started saying some

18           words to him, saying like, oh, I don't care

19           what you are or who you with, whatever, you're

20           not going to talk to me this way, and started

21           choking him.

22   Q.    As -- as Rock and the defendant are having

23           their little argument or whatever, where are

24           you?

25   A.    I myself am right here, right where he was



1 standing right close by.

2 Q. And where is David?

3 A. And David is still right over here.

4 Q. How close are -- where the defendant and Rock  
5 are, how close is David to them?

6 A. Right next to 'em.

7 Q. As close as we are or closer?

8 A. About as close as we are or even closer.

9 ATTORNEY CHERNIN: Could -- for  
10 the record, Judge, you want to say about how  
11 far that is, the distance.

12 THE COURT: Mr. Griffin, I'm  
13 assuming is going to clarify that for us.

14 Go ahead, Mr. Griffin.

15 ATTORNEY GRIFFIN: Five feet.

16 Four feet.

17 THE COURT: The distance between  
18 the defendant and the -- or the prosecutor and  
19 the witness from the court's visual is a  
20 distance of about three to four feet. You may  
21 continue.

22 ATTORNEY CHERNIN: Right. Well,  
23 I would respectfully say it's --

24 THE COURT: Mr. Chernin, you  
25 asked the court to do it, I've done it. Move

1           along.

2                           ATTORNEY CHERNIN:   Well, Your

3           Honor --

4                           THE COURT:   We'll have a side bar

5           then.

6                           (Side bar.)

7                           THE COURT:   You may continue.

8   BY ATTORNEY GRIFFIN:

9   Q.   Mr. Torres, I'm going to show you now a

10       photograph that's been marked as Exhibit 14.

11       I'm going to ask you to take a look at it.

12   A.   Okay.

13   Q.   Do you recognize that?

14   A.   Yes, I do.

15   Q.   The space in that kitchen as we see in this

16       picture, it's a little bit tighter than is on

17       this particular diagram; right?

18   A.   Yes.

19   Q.   In other words, my -- could -- could two

20       people shoulder to shoulder walk in the space

21       between the kitchen and the sink right next to

22       each other, you know, walk together, or would

23       you have to go one at a time?   In this space

24       right in here.

25   A.   You can actually walk two -- within the

1           tables, not right there. It's usually in the  
2           middle.  
3    Q.    The table's usually in the middle?  
4    A.    Right.  
5    Q.    The foot that we see back there, is that David  
6           Diaz?  
7    A.    Yes.  
8    Q.    At the time you saw the defendant and Rock  
9           engaged in their physical altercation, would  
10          their spot, when that happened, be on this  
11          picture? In other words, when you saw the  
12          defendant grab Rock, where were they?  
13   A.    Right by this plug fixture right here.  
14   Q.    You're talking about the little outlet there  
15          on Exhibit 14?  
16   A.    Right.  
17   Q.    And where was David at that point?  
18   A.    David was right -- right by the door.  
19   Q.    You're pointing to the white door in this  
20          picture and really the right side of it?  
21   A.    Right side.  
22   Q.    And where were you?  
23   A.    I was right here by the sink. Actually this  
24          is my hat.  
25   Q.    That's your hat?

1 A. Yes.

2 Q. Do you recall a guy by the name of Donald  
3 Jennings being in this kitchen?

4 A. I don't know Donald Jennings. I don't recall  
5 the name.

6 Q. What about maybe the defendant's cousin? Do  
7 you remember the defendant's cousin being in  
8 there?

9 A. Yes.

10 Q. What did you call him?

11 A. Darnell.

12 Q. Darnell?

13 A. Yes.

14 Q. Was there anyone else in the kitchen?

15 A. Yes, there was other girls in the kitchen  
16 also.

17 Q. Was one of them the defendant's sister?

18 A. Yes.

19 Q. Where was she about?

20 A. Over here by the stove.

21 Q. You're pointing -- again, point to it on the  
22 picture, put your finger on there.

23 A. Right here.

24 Q. You're pointing on this picture, what would be  
25 the lower end of the stove?

1 A. Right.

2 Q. Okay. What did the defendant do to Rock?

3 A. Choked him and also punched him in the mouth.

4 Q. What did Rock do to the defendant that you

5 saw?

6 A. Was pushing him off, telling him that he

7 wasn't scared of him.

8 Q. Did the -- did the defendant make some comment

9 to Rock about Rock being an MP?

10 A. Yes, he did.

11 Q. What was that?

12 A. That he didn't care if he was an MP or who the

13 hell he was, that he couldn't talk to him like

14 that.

15 Q. What's an MP?

16 A. A -- a gang affiliation with Mexican Posse.

17 Q. Was Rock MP?

18 A. Used to be.

19 Q. And it's fair to say that in the gang world --

20 you know something about the gang world; don't

21 you?

22 A. Yes.

23 Q. That -- that you may stop affiliating with a

24 gang, but for most people and for the rest of

25 the world that's what you are forever; right?

1 A. You're associated with them forever, yes.

2 Q. Okay. Did the altercation between the

3 defendant and Rock take seconds, minutes,

4 hours, days? How long?

5 A. I say less than a minute.

6 Q. And what did you do?

7 A. Well, after I seen him hit Rocky in the mouth,

8 which is my friend, I grabbed him from behind

9 his jacket in attempt to either push him out

10 the door or to leave.

11 Q. Grabbed who?

12 A. Slim.

13 Q. From behind?

14 A. From behind.

15 Q. So do you know whether or not Slim knew you

16 were coming at that point?

17 A. No, he didn't.

18 Q. And what happened when you grabbed him from

19 behind?

20 A. I lost balance, because someone either hit him

21 or pushed him and knocked both of us to lose

22 balance and he twisted out of it, as we stood

23 up he punched me twice in the eye.

24 Q. And that's what -- what left your marks on

25 your face in Exhibits 8 and 9?

1 A. Correct.

2 ATTORNEY GRIFFIN: Judge, I'd ask  
3 that Exhibits 8 and 9 be published to the  
4 jury. First I'll move 8 and 9 into evidence.

5 THE COURT: I'm double checking  
6 my notes. I don't believe they have been  
7 received into the record at this time.

8 ATTORNEY GRIFFIN: You're right,  
9 they haven't. I'll move them into evidence at  
10 this time.

11 THE COURT: I take that back.  
12 Exhibit -- it's Exhibit 8 and 9?

13 ATTORNEY GRIFFIN: Yes.

14 THE COURT: They have not been  
15 received into the record. Are you moving them  
16 in at this time?

17 ATTORNEY GRIFFIN: Yes.

18 THE COURT: Any objection?  
19 Exhibit 8 and Exhibit 9 are the photographs of  
20 the --

21 ATTORNEY CHERNIN: No, Judge.

22 THE COURT: -- of the witness,  
23 Richard Torres.

24 ATTORNEY CHERNIN: I'm sorry, no  
25 objection.

1 THE COURT: Court will receive  
2 Exhibit 8 and Exhibit 9 into the record at  
3 this time.  
4 (Exhibits Number 8 and 9 were  
5 received into evidence.)  
6 ATTORNEY GRIFFIN: Permission to  
7 publish.  
8 THE COURT: Permission granted.  
9 They've been published. You may  
10 continue.  
11 ATTORNEY GRIFFIN: Thank you.  
12 BY ATTORNEY GRIFFIN:  
13 Q. You grabbed the defendant from behind and he  
14 turned around, that's when he punched you?  
15 A. Yes.  
16 Q. Where are you in that kitchen when the  
17 defendant punches you?  
18 A. By the kitchen sink.  
19 Q. Again on Exhibit 14, point to the -- if you  
20 would -- on this picture where you were  
21 when -- when the defendant punched you.  
22 A. Right here.  
23 Q. You're pointing to what would be the left sink  
24 basin as you look at it?  
25 A. Yes.



1 Q. Okay. What happened when he punched you?

2 A. He hit me kind of hard, so I blacked out a

3 little bit.

4 Q. Did you actually go down the floor

5 unconscious?

6 A. No, I leaned up against the second sink.

7 Q. And when you did that what happened?

8 A. I heard a gunshot.

9 Q. Where was the gunshot coming from?

10 A. To the right of me. To the right side of

11 my -- my ear.

12 Q. And who was to the right of you?

13 A. At that time it was Slim.

14 ATTORNEY GRIFFIN: I'm going to

15 ask you to again step off, if I may, and I'm

16 going to ask if Detective Casper can join me,

17 Judge, just as another body used to show where

18 people were.

19 THE COURT: You may.

20 BY ATTORNEY GRIFFIN:

21 Q. Mr. Torres, I'm going to ask you to come

22 down. I want you to assume -- I want you to

23 stand over here. Was the sink to your back

24 when you got punched?

25 A. Yes.

1 Q. Okay. So we're going to assume just for the  
2 minute the sink is sort of right behind you.  
3 Okay. And this would be sort of the doorway  
4 back into the living room --

5 A. Yes.

6 Q. -- as I pointed to the witness box, which is  
7 now to your right and then behind you in that  
8 area; right?

9 A. Yes.

10 Q. Point to where the kitchen table would be  
11 then.

12 A. Kitchen table would be right up on -- right  
13 above here.

14 Q. Where would the door be that's in Exhibit 14,  
15 this -- this white door?

16 A. White door would be right about here.

17 Q. How far is that door --

18 THE COURT: You're pointing off  
19 to the right with your right arm extended off  
20 to the right of the courtroom in the direction  
21 of the window, and the -- and the -- what's  
22 been labeled previously as Exhibit 1.

23 BY ATTORNEY GRIFFIN:

24 Q. As you stand where you are now, is this wall  
25 about that far or would the door have been a

1           little bit closer or a little bit further  
2           away?  
3    A.    Just about this distance.  
4    Q.    Now I want you to have Detective Casper stand  
5           where Slim was.  
6    A.    He --  
7                           THE COURT:  We need you to keep  
8           your voice up.  
9    A.    He would be probably around right about here.  
10   BY ATTORNEY GRIFFIN:  
11   Q.    And again, put yourself back where you were.  
12           And this is after he punches you?  
13   A.    After he punches me.  
14   Q.    So you've gone over by the wall and gotten  
15           him, he turns around, punches you twice?  
16   A.    Yeah, and steps back to his position.  
17   Q.    Is that about the approximate distance that  
18           you recall?  
19   A.    Yes.  
20   Q.    Now I'm going to stand where you are, I'll be  
21           you now, and I want you to show the jury where  
22           David Diaz was.  
23   A.    David was right about here.  
24   Q.    And how was he facing?  
25   A.    Just as I'm standing right now.

1 Q. So you have right now, again, if I'm you, I'm  
2 looking at your back?  
3 A. Um-hmm (meaning yes).  
4 Q. The defendant is directly to your left;  
5 correct?  
6 A. Yes.  
7 Q. Okay. And you are looking at a direction that  
8 would have you in the house, in any event, be  
9 looking in a southeasterly -- is that right --  
10 no, northeasterly direction; correct?  
11 A. Correct.  
12 Q. Okay. Now I'm going to go assume David's  
13 position and you go back and take yours.  
14 Okay.  
15 This was the point where you  
16 recall everyone being at the moment of the  
17 gunshot?  
18 A. Yes.  
19 Q. And where is Rock? Like if -- if I'm David  
20 where is Rock?  
21 A. Right next to him.  
22 Q. In -- on -- on what would be towards his back  
23 side?  
24 A. His front side.  
25 Q. His front side. In other words, over here

1           where this --

2    A.    Right.

3                           ATTORNEY GRIFFIN:   What do you

4           call this, Judge?

5    A.    Yeah.

6                           THE COURT:   Pointing to the

7           easel?

8                           ATTORNEY GRIFFIN:   Yes, the

9           easel.

10   BY ATTORNEY GRIFFIN:

11   Q.    Was this about the right distance?

12   A.    Yes.

13   Q.    Okay.   Was there anyone behind David at that

14           point that you could see?

15   A.    No one I could see to my right, no.

16   Q.    Is Isaiah there with you guys?

17   A.    Yes.

18   Q.    Where is Isaiah?

19   A.    Just some -- right by the side of Slim.

20   Q.    When you say Isaiah is by the side of Slim, do

21           you mean between Slim and Rock, or by the

22           other side of Slim by you?

23   A.    If his sister is there then Isaiah was in the

24           kitchen behind Slim's sister.

25   Q.    Where is Slim's sister at this point?

1 A. By the stove.

2 Q. Again, that would be up where I'm pointing  
3 towards that wall, which would have been  
4 directly north of where David is?

5 A. Yes.

6 Q. Not directly, but north of where he is?

7 A. Right.

8 Q. Okay. After Slim hits you, you said you sort  
9 of black out, see stars, how would you  
10 describe it?

11 A. Like kind of black out, seeing white.

12 Q. At that point you hear a gunshot?

13 A. I heard a gunshot.

14 Q. Do you see anyone with a gun?

15 A. I heard the gunshot, when I came back to I did  
16 see someone with a gun.

17 Q. Who is that?

18 A. Slim.

19 Q. Okay. In other words, that would be the  
20 detective?

21 A. Yes.

22 Q. And where is David at that point?

23 A. David's already falling from his position  
24 towards the kitchen stove.

25 Q. Falling what would be -- if I'm David again

1 I'm going to fall toward my left and toward  
2 the floor?  
3 A. Yes.  
4 Q. Okay. At that point did you know where David  
5 was shot?  
6 A. Yes.  
7 Q. I mean to the point where you didn't --  
8 A. I didn't know exactly like when he got shot,  
9 but I seen that he was falling from the  
10 gunshot.  
11 Q. Could you see where it was?  
12 A. Yes.  
13 Q. Can you point on my body where it was? As  
14 best you recall.  
15 A. Right about here.  
16 Q. And you're pointing to what would be my left  
17 ear about an inch or so up above my left ear?  
18 A. Yes.  
19 Q. Okay. You did not see the shot that killed  
20 David; correct?  
21 A. Correct.  
22 Q. In other words, do you know what muzzle flash  
23 is?  
24 A. No, I don't.  
25 Q. When someone fires a gun and the sparks that

1           come out of the end of the barrel, did you  
2           ever see those?

3    A.    No.

4    Q.    Did you ever see smoke from the gun?

5    A.    No, I don't think so.

6    Q.    When did you see someone with a gun and who  
7           was it?

8    A.    After David was falling I did see Slim in a  
9           crouched position with a gun.

10   Q.    Okay. I'm going to have you walk over where  
11          Slim was now, and I'm going to ask Detective  
12          Casper to just stand -- actually you can go,  
13          if you would, Detective, thank you. Are you  
14          still here by the counter where I am?

15   A.    Yes, leaning more towards my left side.

16   Q.    Leaning?

17   A.    Leaning.

18   Q.    Okay. And what is Slim doing? If you can  
19          show the jury I'll have you do it right now  
20          where you are, then we'll turn around, I'll  
21          let the jury see it better.

22   A.    Slim has a gun in his hands and he drops down  
23          like this.

24   Q.    I'm going to ask you to turn around and show  
25          the jury that move that you saw Slim do.



1 A. Slim was crouched down with a gun in his hand  
2 and looking around.

3 Q. And again, that would be right in front of  
4 you?

5 A. Right in front of me.

6 Q. What did you do?

7 A. Me, I went towards -- towards the bathroom.  
8 Stepped towards the bathroom.

9 Q. Away from Slim?

10 A. Away from Slim.

11 Q. If you would -- you can take a seat again.  
12 Thank you.

13 Do you recall what kind of gun  
14 you saw Slim with?

15 A. I stated that it was either a nine millimeter  
16 or a 380.

17 Q. Both of which are semiautomatics; right?

18 A. Correct.

19 Q. Do you remember the coloring?

20 A. Black with chrome.

21 Q. Chrome, chrome with black or black with chrome  
22 or what?

23 A. Black with chrome.

24 Q. Was there ever a time where Slim was standing  
25 with the gun, I mean holding it still?

1 A. He had it in his hand, yes.

2 Q. Was it his right hand or his left hand?

3 A. It was the right hand.

4 Q. So as Slim stands here, you're sort of

5 directly in front of him at the moment that --

6 right after he hits you?

7 A. Right.

8 Q. And David is off to his left?

9 A. Yes.

10 Q. Okay. Do you remember how tall David was?

11 A. About five nine, five ten.

12 Q. And when -- at least right after the shooting

13 Slim had the gun in his right hand, kind of --

14 was he moving back and forth the way I am? In

15 other words, rotating my shoulders?

16 A. Looking around, yes.

17 Q. And David is now falling or has fallen to the

18 ground?

19 A. Has fallen completely.

20 Q. What did you hear after the gunshot?

21 A. I heard someone in the kitchen yelling, you

22 shot that guy.

23 Q. Do you know who that was?

24 A. I can't recall who it was.

25 Q. Was it a male or a female?

1 A. It was a male.

2 Q. What did Slim do? In other words, as you

3 moved toward the bathroom, did you keep your

4 eye on him?

5 A. Yes, I did.

6 Q. Did he ever point the gun at you?

7 A. No, he didn't.

8 Q. And what did he do?

9 A. He was more in a confused state, kind of

10 confused, didn't know what was really going on

11 because someone turned the lights off.

12 Q. Do you know who that was?

13 A. No, I don't know.

14 Q. Where was the light switch in that room?

15 A. By the kitchen entrance.

16 Q. How long was it before -- strike that.

17 At some point Slim took off out

18 of there?

19 A. Yes, shortly after the lights went out. There

20 was still light from the bathroom.

21 Q. Did you see him run out?

22 A. Yes, I did.

23 Q. And what did you do then?

24 A. I gave chase behind.

25 Q. You gave chase?

1 A. To him, yes.

2 Q. You chased an armed man?

3 A. Yes.

4 Q. Why?

5 A. Because he just killed my friend.

6 Q. How far did you chase him?

7 A. I didn't get too far, people were running also

8 from behind and pushing me out of the way.

9 Q. It's fair to say that after the gunshot there

10 is a mass departure from that house; right?

11 A. Yes.

12 Q. And what did you do then? Did you catch him?

13 A. No, I didn't.

14 Q. And what did you do?

15 A. I walked and turned around and I seen my

16 friend lying there in a pool of blood.

17 Q. Did you ever get -- I guess -- let me back

18 that up.

19 When you chased the defendant,

20 did you ever chase him to the point where you

21 left the house?

22 A. No.

23 Q. Where did you go get to the front door?

24 A. Just to the living room.

25 Q. And then what did you do?

1 A. I had turned around and seen my friend full of  
2 blood.

3 Q. And after you saw that what did you do next?

4 A. I had went upstairs, and I had the other  
5 friend that was up in my bedroom, told him  
6 that I had to leave, that my home boy had just  
7 got shot in the kitchen.

8 Q. Did you tell Adriana that her husband had been  
9 shot?

10 A. I had yelled that David had been shot.

11 Q. Why did you have to leave at that point?

12 A. I was in violation of probation and I was --  
13 had a warrant.

14 Q. And how long was it before the police then  
15 were able to find you?

16 A. Within a day.

17 Q. Did they find you -- did you turn yourself  
18 in? What happened?

19 A. They had called some other friends of mine and  
20 gotten ahold of me, which I initially called  
21 them and turned myself in.

22 Q. Did you end up going back to some kind of, I  
23 don't know, a custodial setting so to speak at  
24 this point then?

25 A. Yes, I was in a halfway house.

1 Q. For how long?

2 A. For around six months.

3 Q. When you turned yourself in, how long did you

4 think you were facing back in jail for that

5 violation of probation?

6 A. Two years.

7 Q. Why didn't you just wait till the police found

8 you, then stay on the run as long as you

9 could?

10 A. Because nobody else know what happened besides

11 myself and the people that were in that

12 kitchen that night. And most of them were not

13 my friends.

14 Q. You've talked to Rock about this at least once

15 or twice since then; haven't you?

16 A. Yes.

17 Q. And has Rock ever told you that he saw Slim

18 with a gun there in that kitchen?

19 A. Yes, he have.

20 ATTORNEY CHERNIN: Objection.

21 Hearsay.

22 THE COURT: Side bar with the

23 lawyers.

24 (Side bar.)

25 THE COURT: Objection is

1           overruled.

2   BY ATTORNEY GRIFFIN:

3   Q.   Mr. Torres?

4   A.   Yes.

5   Q.   When you talked with Rock about this, has he

6           ever told you when you were talking to him

7           that he didn't see Slim with a gun that day?

8   A.   No, he didn't.

9   Q.   What did Rock tell you about what he saw?

10  A.   Basically what I explained, that he was

11           talking with David, and that he had heard a

12           shot and he ducked out of the way. And when

13           he looked back up that he had seen Slim with a

14           gun.

15  Q.   Did he ever tell you that he saw Slim actually

16           point the gun towards David's head?

17  A.   No, he didn't.

18  Q.   Did he describe the gun that he saw to you

19           ever?

20  A.   He had said that he knew that he had a gun,

21           but he didn't describe what it was.

22  Q.   Now, you also saw at some point another --

23           that Ricky guy with a gun that night; right?

24  A.   Yes, I did.

25  Q.   And do you recall what kind of gun he had?

1 A. It was a smaller caliber, like a 25 or 38.  
2 Q. And was that a semiautomatic as well?  
3 A. Yes, it was.  
4 Q. How tall is Ricky?  
5 A. About five eight, five nine.  
6 Q. About your size?  
7 A. Yeah, just about my size.  
8 Q. And where was he after the shooting?  
9 A. After the shooting?  
10 Q. Yeah.  
11 A. After the shooting I did not see him.  
12 Q. How many people that night had to tell Slim to  
13 chill out or calm down or words to that  
14 effect?  
15 A. It was said more than three times.  
16 Q. Did he ever do it?  
17 A. No.  
18 Q. I'm going to show you what's been marked as  
19 Exhibit 17. Do you recognize that?  
20 A. Yes.  
21 Q. What is it?  
22 A. It's a picture of Slim.  
23 Q. It's actually a -- a photo array or a photo  
24 lineup or whatever with six different  
25 photographs in it; correct?



1 A. Correct.

2 Q. And when did you see that?

3 A. I saw it with the detectives.

4 Q. And do you remember when it was that you

5 talked to the detectives?

6 A. I think it was the 1st of February.

7 Q. Of last year?

8 A. Of last year.

9 Q. And you say it's a picture of Slim, where is

10 the guy you know as Slim in that photo array?

11 A. In the lower middle section.

12 Q. Around that picture there's a circle, and then

13 some a -- date and some words and that. Can

14 you explain what all of that is to the jury.

15 A. It's my name and the date, and it says, Slim

16 shot David.

17 Q. Why did you put that on there?

18 A. Because I hit him with the gun.

19 Q. When the shot went off, Mr. Torres, how close

20 was it to you?

21 A. The distance from the kitchen sink to the door

22 entrance, like three feet, four feet.

23 Q. Right by where David was?

24 A. Right where David was -- was at.

25 Q. How loud was it?

1 A. Really loud.

2 Q. I'm going to ask you a couple questions. When

3 you met with the police then on February 1st,

4 do you remember where that was that you spoke

5 with them about what had happened there when

6 David got shot?

7 A. When I first seen him or when I was first --

8 Q. Interviewed.

9 A. It was in the County jail.

10 Q. It was in an interview room over -- actually

11 the Milwaukee Police Department, one of those

12 kind of smaller interview rooms; right?

13 A. Right. Same building.

14 Q. Do you recall telling them that you think you

15 heard a guy named Luciano yell at Slim, you

16 shot him, you shot that guy?

17 A. Yeah, I -- I recall that.

18 Q. And did you tell them that you heard a woman

19 who you thought was Slim's sister say, we

20 gotta get out of here, you shot him, let's go?

21 A. Yes, that came towards from the kitchen.

22 Q. Okay. Do you remember telling the police that

23 on February 1st?

24 A. Yes, I do.

25 Q. And is it fair to say that about some of this

1 or parts of this your memory was better back  
2 on February 1st than it is today?

3 A. Correct.

4 Q. When you spoke to the police on February 1st  
5 about all of this, did you lie to them at all?

6 A. No, I didn't.

7 Q. Was there anyone in that house that you --  
8 when you were there that was even as close to  
9 being as tall as the defendant?

10 A. No.

11 Q. I mean, was there anyone that was six six or  
12 taller other than Danny Wilber?

13 A. No, he was taller than everyone there.

14 Q. I mean, would you -- in terms of height would  
15 you say that -- that Slim is tall, very tall,  
16 exceptionally tall? How would you describe  
17 it?

18 A. Very tall.

19 Q. Was there anyone like him there at all in  
20 terms of height?

21 A. No one close.

22 Q. How tall are you?

23 A. I'm five ten.

24 Q. I'm going to ask you to step off that --  
25 you're five ten? I'm going to ask you to step

1 off that -- stand right by that board there  
2 with those questions on it. I'm going to --  
3 with your shoulder right there. I'm going to  
4 ask you to point straight out with your arm  
5 toward the -- toward that. Okay. If -- maybe  
6 I can do this without writing on the wall this  
7 time. I'm going to ask you to step back a  
8 little bit, Mr. Torres, and put your shoulder  
9 right up against that wall, and your -- your  
10 right arm.

11 Okay. Would you agree with me  
12 that if I put -- that that's about where your  
13 finger would hit the wall?

14 A. Yes.

15 Q. Is that a fair spot?

16 A. Yeah.

17 Q. Okay. So if we put this little piece of -- if  
18 we put this little piece of paper there. I'm  
19 going to write on the wall, Judge. I'm going  
20 to put this -- okay. I'm going to ask you to  
21 point again, now it won't matter. Is that  
22 about the same spot? Give or take; right?

23 A. Yes.

24 Q. Okay. So we'll draw the line right there and  
25 we'll put your initials, that's about where

1           you would point if you pointed straight out;  
2           correct?  
3    A.    Yes.  
4    Q.    Okay.   Thank you.  
5                    THE COURT:   Could you label that  
6           in any way, Mr. Griffin?  
7                    ATTORNEY GRIFFIN:   Yes, I put the  
8           initials RT on it for Richard Torres.  
9                    THE COURT:   Okay.   Thank you.  
10   BY ATTORNEY GRIFFIN:  
11   Q.    Was David Diaz taller or shorter than you?  
12   A.    A little bit shorter.  
13   Q.    How many times before that -- that -- when  
14           this happened, when David got shot, how many  
15           times in your life had you seen the defendant?  
16   A.    That was the first time.  
17                    ATTORNEY GRIFFIN:   Could I have a  
18           minute, Judge?  
19                    THE COURT:   You may.  
20                    ATTORNEY GRIFFIN:   Could I see  
21           you on the side?  
22                    THE COURT:   Side bar.  
23                    (Side bar.)  
24                    THE COURT:   Mr. Griffin, anything  
25           further?

1 ATTORNEY GRIFFIN: Yes.

2 THE COURT: Go ahead.

3 BY ATTORNEY GRIFFIN:

4 Q. Do you recall describing Slim after the  
5 shooting as looking freaked out?

6 A. Yes.

7 Q. What did you mean by that?

8 A. He had a -- a look on his eye of confusion.

9 Q. Did you describe it as looking like he wasn't  
10 sure what to do next?

11 A. Right.

12 Q. At any time, Mr. Torres, after the shooting,  
13 before Slim disappeared outside the front door  
14 and all that, did you take your eyes off him?

15 A. Before?

16 Q. No, after the shooting. Once you see he's got  
17 the gun, did you ever take your eyes off him?

18 A. No. He was already running out the door,  
19 running out towards the door.

20 Q. Do you recall the defendant at any point right  
21 after the shooting, throwing his hands up in  
22 the air like this?

23 A. No.

24 Q. Anything like that?

25 A. No.

1 Q. Do you recall him patting himself down to see  
2 if he'd been shot?  
3 A. No, I don't recall it.  
4 Q. Did he do that?  
5 A. No.  
6 Q. Did you tell the detectives that you got  
7 pissed and tried to chase Slim?  
8 A. Yes.  
9 Q. Now, when you first came in to talk to the  
10 detectives, it's fair to say that they  
11 certainly had some thoughts that it was  
12 possible you had shot David; right? They had  
13 no idea at that point who to think of?  
14 A. Right.  
15 ATTORNEY CHERNIN: Objection.  
16 THE COURT: Calls for  
17 speculation?  
18 ATTORNEY CHERNIN: Yes.  
19 THE COURT: Sustained.  
20 BY ATTORNEY GRIFFIN:  
21 Q. Did the detectives at any point tell you that  
22 they looked -- they might not have used these  
23 words, but did the detectives communicate to  
24 you in any way that they thought you were a  
25 suspect?

1                           ATTORNEY CHERNIN:  Objection.  
2           Calls for hearsay.  
3                           THE COURT:  No.  Overruled.  I'll  
4           allow that.  
5   A.  They were saying that I -- I could be a  
6       suspect because they had no knowledge of what  
7       happened.  
8   BY ATTORNEY GRIFFIN:  
9   Q.  When they talked to you were you able to give  
10      them Slim's name?  
11   A.  Just his nickname.  
12   Q.  From that they were able to ultimately -- they  
13      were able to show you that photo array though  
14      and you were able to see exactly who it was  
15      that you were talking about?  
16   A.  Yes.  
17   Q.  I'm going to show you, Mr. Torres, what's been  
18      marked as Exhibit 51.  Do you recognize that?  
19   A.  Yes.  
20   Q.  What is it?  
21   A.  It's a sketch of -- one of the detectives  
22      sketched out of the house.  
23   Q.  Now, in that particular diagram there are  
24      different names; correct?  
25   A.  Yes.



1 Q. Some of -- some of them aren't names, like it  
2 says 'me,' that means you; correct?  
3 A. Correct.  
4 Q. And you have Jay and a white female and Slim's  
5 sister and Luciano and Slim and Rock and David  
6 and Ricky and other people watching, all those  
7 kind of things; correct?  
8 A. Yes.  
9 Q. Okay. All the different people that you --  
10 well, strike that.  
11 This is you telling the  
12 detectives where everyone is?  
13 A. Yes, in the kitchen.  
14 Q. The detectives didn't bring this to you with  
15 all the X's and names already on there and  
16 just asked you if it was right?  
17 A. No.  
18 Q. Okay. And at this particular moment in time  
19 that you're trying to represent here, what are  
20 you trying to represent?  
21 A. The household. Who was who and who was  
22 standing where.  
23 Q. In this particular diagram, for example, you  
24 and Slim are close, Rock and David are close  
25 right there, you see by the side porch?

1 A. Yes.

2 Q. Okay. Is the side porch behind the white door  
3 that we see in Exhibit 15?

4 A. Yes.

5 Q. So when you say that David's right by the side  
6 porch, in this hand diagram, he's actually a  
7 little bit further down out of the kitchen  
8 than the actual door is; correct?

9 A. Correct.

10 Q. This particular diagram, if you will, is not  
11 drawn to scale?

12 A. No, it's not.

13 Q. You recall David standing again along the  
14 right side of this door?

15 A. Right.

16 Q. Who's Hubbie, H-U-B-B-I-E, that's on there?

17 A. Javy.

18 Q. That's Javy?

19 A. Yes.

20 Q. That's the way the detective wrote it?

21 A. That's the way I wrote it. I don't know how  
22 to spell his name.

23 Q. Is this your handwriting or the detective's?

24 A. My handwriting.

25 Q. Where it says 'Jay friend,' what does that

1           mean?

2    A.    It's -- that's actually Slim's cousin.

3    Q.    Who you also thought was one of Jay's friends?

4    A.    Right.

5    Q.    Okay. And then where you have, for example,

6           Slim's sister, she's sort of just off the

7           right side of the table; correct?

8    A.    Correct.

9    Q.    And friend of Nando, do you see that up on the

10           top there above the table?

11   A.    Yes. That's just a friend of mine's friend.

12   Q.    Do you know his name?

13   A.    No, I didn't.

14   Q.    Hispanic or black?

15   A.    Hispanic.

16   Q.    And then white female over to the left of Jay,

17           do you know who that was?

18   A.    I don't recall her name.

19   Q.    Does Andalia sound right or Andelia or

20           anything like that, do you know?

21   A.    No, I don't recall.

22   Q.    Now, you have Slim's sister, for example, in

23           this particular diagram as we look at it to

24           the right of the table, you said before she

25           was over by the stove; correct?

1 A. Right.

2 Q. Are you sure she wasn't actually walking over  
3 away from you and Slim toward the bathroom?

4 A. No, I seen her right there.

5 Q. Okay. From where she was, assuming she had  
6 her eyes open and was actually looking, could  
7 she have seen this?

8 A. Yes, it's possible.

9 ATTORNEY CHERNIN: Objection.

10 Vague. See what?

11 ATTORNEY GRIFFIN: The shooting.

12 A. Yes, it's possible.

13 BY ATTORNEY GRIFFIN:

14 Q. I mean, if she doesn't have any vision  
15 problems, and if her eyes weren't closed, and  
16 I mean, she didn't have her back to Slim;  
17 right? She wasn't looking at the stove and  
18 Slim's behind her; right?

19 A. Right.

20 Q. On this particular diagram where you have, you  
21 know, other people watching and Ricky and all  
22 that, how are you able to see them from your  
23 position in front of the cabinets?

24 A. When I first came down the stairs I looked  
25 over to my right and I seen the people in the

1 living room.

2 Q. So these people are just in the living room?

3 A. Right.

4 Q. Where in the living room? As you recall.

5 A. Right by this couch and hanging out right by

6 the doorway.

7 Q. In the -- in the area between the living room

8 and the kitchen or in the living room?

9 A. In the living room.

10 Q. At the time David got shot, we see that his --

11 in this particular photograph, which is

12 Exhibit 25, can you read that number there?

13 A. 25.

14 Q. 25. It shows David's -- I guess his feet

15 closer to this -- this door frame, his -- his

16 upper body is sort of -- rear end is sort of

17 even with the door and his upper body. Is

18 that about -- in other words, if we just

19 picked him straight up, would he be where he

20 was? Did he crumple down and then fall? Do

21 you recall that specifically?

22 ATTORNEY CHERNIN: Well,

23 objection. This assumes a fact not in

24 evidence because this witness has indicated he

25 didn't see the shooting, so how he would be

1           able to tell you about these crumplings and  
2           movements.

3                       THE COURT: Overruled. I'll  
4           allow it. He has testified that he did make  
5           observations of individuals in their  
6           movements, particularly as it relates to the  
7           defendant just after the shooting.

8   BY ATTORNEY GRIFFIN:

9   Q.   Mr. Torres, you talked before as you were  
10       standing here what we call the sink, that  
11       David was just to your right; correct?

12   A.   Um-hmm (meaning yes).

13                       THE COURT: Is that a yes?

14                       THE WITNESS: Yes.

15   BY ATTORNEY GRIFFIN:

16   Q.   As I recall you had David sort of at an angle  
17       like this; correct?

18   A.   Yes.

19   Q.   More or less? Did you see David after the  
20       gunshot, was he still standing? In other  
21       words, was he still up or was he already  
22       falling or what?

23   A.   He was already falling.

24   Q.   Okay. In this particular -- in other words, I  
25       don't know how to explain this well, but if we

1       took David from this position and just stood  
2       him straight up so his feet kind of turned, or  
3       he would be actually to the right of the white  
4       door, you know what I'm saying? In other  
5       words, if you see his feet, his feet are to  
6       the living room side of the white door?

7    A.   Yes.

8    Q.   So at the time he got shot was he here in  
9       front of the white door specifically or back  
10       more toward the living room? If you recall.

11   A.   Right -- right here. Right here. Right by  
12       the door.

13   Q.   Right by the -- you're pointing to what would  
14       really be the door frame?

15   A.   Correct.

16   Q.   Point again with your finger so the jury can  
17       see it.

18   A.   Right here.

19   Q.   And does he -- as best you recall, did you see  
20       him fall?

21   A.   I -- I did see him start to fall.

22   Q.   Okay. Did he -- I hate -- you know the way  
23       you chop a tree and it just falls straight  
24       down, other people, their knees may crumple,  
25       that kind of thing, do you recall what

1           happened with him?

2    A.   He went like kind of straight down, yes.

3    Q.   Did you hear him hit the ground?

4    A.   Yes, I did.

5    Q.   In this particular kitchen at the time, at

6           moment of the shooting, how many feet are

7           there, as best you recall, from Slim, the

8           defendant, to David?

9    A.   Like three -- three, four feet.

10   Q.   As the defendant reached over with his arm, if

11           he had the gun in his right arm, could he have

12           gotten to David's head?

13   A.   Probably.

14   Q.   Okay. Now, at one point a guy by the name of

15           William Kohl came to see you, specifically

16           October 30th of last year; right?

17   A.   Yes.

18                   ATTORNEY CHERNIN: No, I don't

19           believe that's true.

20                   THE COURT: Off the record.

21                   (Discussion off the record.)

22   BY ATTORNEY GRIFFIN:

23   Q.   Well, you remember it was sometime in the fall

24           of last year; correct?

25   A.   Yes.



1 Q. And did you tell him that you saw Slim slip  
2 what you thought was a gun underneath his  
3 shirt?  
4 A. Yes.  
5 Q. And did you then tell him that you weren't 100  
6 percent sure it was a gun, but you thought it  
7 was?  
8 A. I told him that possibly it was.  
9 Q. What else could it have been?  
10 A. Nothing but a -- probably a bar, but I thought  
11 he was carrying a bar with him.  
12 Q. A what?  
13 A. Like a piece of piping.  
14 Q. Pipe?  
15 A. Right. I doubt it.  
16 Q. Do you know why you described it to the police  
17 as a semiautomatic handgun?  
18 A. Because I know partially what they look like.  
19 Q. At the moment David got shot was there anyone  
20 else close to him?  
21 A. Just the people that were around him, Rock and  
22 myself and Slim.  
23 Q. Did you shoot David?  
24 A. No, I did not.  
25 Q. Did Rock?

1 A. No, he did not.

2 Q. Did Ricky?

3 A. I didn't see Ricky at all.

4 Q. As David's standing there in this kitchen by

5 the door there as you said at the angle he was

6 at, he sort of -- again, this is Exhibit 14 --

7 he's standing sort of right here turned a

8 little bit this way; is that right?

9 A. Rock's over here and he's talking to Rock this

10 way.

11 Q. Okay. Did someone else come in from behind,

12 put a gun to his head and shoot him?

13 A. Nobody came down the stairs.

14 Q. Okay. How about from the living room, did

15 someone run in real quick and put a gun to

16 David's head and shoot him?

17 A. I don't think so.

18 Q. The guy that you -- when you said to the

19 police, Slim shot David, what did you mean by

20 that?

21 A. I seen Slim with the gun, so I assumed that he

22 was the one that shot him.

23 Q. And when you told the police that Slim's

24 sister yelled, you shot him, get out of

25 here --

1 A. It convinced me more that he did.

2 ATTORNEY GRIFFIN: Nothing  
3 further.

4 THE COURT: All right.

5 Mr. Torres, I'm going to have you step down  
6 from the witness stand, you're still under  
7 oath. I'm going to have you remain here in  
8 the -- in the courthouse -- in the safety  
9 building. We're going to take a break in your  
10 testimony, because defense still has an  
11 opportunity to cross examine you, but we're  
12 going to be calling another witness out of  
13 order because of their availability only for  
14 today's proceedings. So we're going to have  
15 you step down, we're going to take the other  
16 witness and then we'll recall you up to the  
17 witness stand.

18 THE WITNESS: Okay.

19 (Witness excused.)

20 ATTORNEY CHERNIN: Your Honor,  
21 the sequestration -- Your Honor.

22 THE COURT: The sequestration  
23 order remains in effect.

24 ATTORNEY GRIFFIN: Okay.

25 THE COURT: State has leave to

1 call its next witness.

2 ATTORNEY GRIFFIN: I thank you,  
3 Judge. I'm going to call Detective Schuler.

4 DEPUTY: All rise for the jury  
5 please.

6 (Jury out of box.)

7 THE COURT: Please be seated.

8 (Break taken.)

9 DEPUTY: All rise for the jury  
10 please.

11 (Jury in box.)

12 THE COURT: You may be seated.  
13 State has leave to call its next  
14 witness.

15 ATTORNEY GRIFFIN: Detective  
16 Schuler.

17 THE COURT: Detective, raise your  
18 right hand and my clerk will swear you in.

19 GREGORY SCHULER, called as a  
20 witness herein, having been first duly sworn,  
21 was examined and testified as follows.

22 THE CLERK: Please be seated.

23 THE COURT: Begin by stating your  
24 full name for the record, spelling your first  
25 and last name, sir.

1 THE WITNESS: Gregory Schuler.

2 G-R-E-G-O-R-Y, and Schuler is S-C-H-U-L-E-R.

3 THE COURT: You may begin.

4 DIRECT EXAMINATION:

5 BY ATTORNEY GRIFFIN:

6 Q. Sir, you are now a retired detective for the  
7 City of Milwaukee Police Department; correct?

8 A. That is correct.

9 Q. When did you retire?

10 A. December 19th of 2004.

11 Q. And you've come back today in response to a  
12 subpoena; correct?

13 A. That is correct.

14 Q. You no longer live in Milwaukee County?

15 A. No sir, I do not.

16 Q. Do you know why you're here though? You know  
17 which case you're here for; correct?

18 A. That is correct.

19 Q. And you've reviewed the reports you filed, and  
20 one of them was an interview that you had with  
21 a guy by the name of Jeranek Diaz on February  
22 1st of 2004; correct?

23 A. Yes sir.

24 Q. In that particular interview with Mr. Diaz,  
25 did he ever tell you that he saw someone with

1 a gun at 1128 West Mineral at around 3:00 --  
2 3:30 in the morning when David Diaz got shot?  
3 A. Yes, he did.  
4 Q. Did he tell you that he saw that person point  
5 the gun at David Diaz?  
6 A. Yes, he did.  
7 Q. And did he identify for you in some way who  
8 that person was?  
9 A. Yes. He identified through a photograph and  
10 by name the person.  
11 Q. And who is that?  
12 A. Danny Wilber.  
13 Q. I'm going to show you what's been marked as  
14 Exhibit 6. Did you show that photo, what I  
15 call a photo array or photo lineup, to Jeranek  
16 Diaz?  
17 A. Yes, I did.  
18 Q. Did he circle the picture of Danny Wilber?  
19 A. Yes, he did.  
20 Q. And did Danny Wilber, whose picture he  
21 circled, do you see that Danny Wilber in court  
22 today?  
23 A. Yes sir, I do.  
24 Q. Can you point him out by where he's sitting  
25 and what he's wearing?

1 A. He's sitting at defense table wearing the  
2 purple striped shirt.

3 ATTORNEY GRIFFIN: May the record  
4 reflect the witness has identified the  
5 defendant.

6 THE COURT: It does.

7 BY ATTORNEY GRIFFIN:

8 Q. Did Mr. Diaz seem unsure of whether or not he  
9 knew Mr. Wilber, or whether or not Mr. Wilber  
10 had a gun, whether or not Mr. Wilber pointed  
11 the gun at Mr. Diaz's head, anything like  
12 that?

13 A. No, he was -- he knew him, knew him from --  
14 also from previous contacts. I believe he  
15 even told me that he had sold him a Cadillac  
16 about a year earlier.

17 Q. I'm going to show you an exhibit, Detective,  
18 marked Exhibit 53. Do you recognize that?

19 A. Yes, I do.

20 Q. Mr. Diaz, told you about going to different  
21 bars that night with Vato and Claudia and  
22 Heather and all that, is that what he told  
23 you?

24 A. Yes, he did.

25 Q. Did he specifically mention a place by the

1 name of Lenny's at 68th and National?

2 A. Yes.

3 Q. Did he also mention them going to the Macho

4 Lounge down on the east side?

5 A. Yes.

6 Q. That after they went there they went to

7 Bacardi's on 27th and Lincoln?

8 A. That is correct.

9 Q. The way he explained it to you, him and his

10 friends, did they all go in one car or two

11 cars?

12 A. It would be two cars.

13 Q. Did he indicate to you whether or not at some

14 point him and his car went to Bacardi's and

15 the other group, including Vato, did not go to

16 Bacardi's?

17 A. That is correct. He said at one point they

18 became separate, the two cars got separated.

19 Q. Did he indicate to you about what time he got

20 back to the residence there at 1128 West

21 Mineral where David Diaz was shot and killed?

22 A. It was early morning, I think about 2:30 --

23 3:00 in the morning.

24 Q. And did he give you some information about how

25 after they got there and that party was going



1           on something happened with some barbells?

2    A.    Yes.

3    Q.    What did he tell you?

4    A.    He had mentioned that there was a lady that

5           lived there with the victim, I believe it was

6           his wife, and some of the guys were lifting

7           barbells and they were clanking them and

8           making noise.

9    Q.    Did he indicate to you at one point that Cindy

10          was hit with a barbell and became upset?

11   A.    Yes.

12   Q.    Now that's in your report; right?

13   A.    Yes.

14   Q.    Did you make that up?

15   A.    No sir.

16   Q.    Did you at some point put words, so to speak,

17          into Mr. Diaz's mouth in this report and put

18          things in here that he never told you?

19   A.    No sir.

20   Q.    Were you aware from someone else about Cindy

21          Diaz getting hit with a barbell, so you just

22          threw it in this report and that way you could

23          pretend Mr. Diaz said it?

24   A.    No sir.

25   Q.    Did he tell you about David coming downstairs

1           and wanting people to leave his house?

2    A.    Yes, he did.

3    Q.    Did he indicate to you that Danny Wilber, the

4           defendant in this case, did he indicate to you

5           how Mr. Wilber was acting?

6    A.    Yes, he did.  He had talked about that he was

7           kind of wild, kind of crazy.

8    Q.    Do you recall Mr. Diaz telling you that

9           Slim -- that was the nickname he used for the

10          defendant; right?

11   A.    Yes.

12   Q.    That Slim was acting goofy, acting as if he

13          was quote, possessed, closed quote?

14   A.    Yes.

15   Q.    Now, in your report specifically, the word

16          goofy and the word possessed, those words were

17          all in quotes.  Why?

18   A.    That would have been a specific word that he

19          had said.  So I put quotes under that or

20          around that word.

21   Q.    To indicate those are specific words that

22          Mr. Diaz used; correct?  In other words, he

23          didn't say crazy and you translated that as

24          goofy and possessed?

25   A.    Correct.

1 Q. Goofy and possessed were words Jeranek Diaz  
2 said to you when you interviewed him last  
3 February?  
4 A. Yes.  
5 Q. Do you recall him telling you about part of  
6 the -- what went on there in that kitchen as  
7 Slim snatching Jay's necklace and ripping out  
8 part of it off of Jay's neck?  
9 A. Yes.  
10 Q. Did Mr. Diaz tell you that he heard about that  
11 or that he saw that?  
12 A. He saw that.  
13 Q. And where was he in the house when he saw it  
14 as he was explaining it to you?  
15 A. I believe it would have been the kitchen  
16 area.  
17 Q. At any time did Mr. Jeranek Diaz tell you that  
18 the defendant said to David Diaz, I don't give  
19 a fuck about you and your family, I'll burn  
20 this mother fucking crib down with or without  
21 your family?  
22 A. Yes.  
23 Q. Is that in quotes in your report as well?  
24 A. Yes.  
25 Q. Is that because you wanted to make it up?

1 A. No sir.

2 Q. Where did those words come from?

3 A. From him.

4 Q. Mr. Diaz?

5 A. Yes.

6 Q. He told you at one point, did he not, that

7 David Diaz said to him something in Spanish

8 about getting rid of the defendant; right?

9 A. Right. That would have been after there was a

10 small confrontation and he wanted him to

11 leave.

12 Q. And the defendant responded to Mr. Diaz by

13 saying, again, quote, I'll fuck you up, closed

14 quote?

15 A. That is correct.

16 Q. Another quote directly from Mr. Diaz to you?

17 A. Yes.

18 Q. How about the part about, let's box, let's box

19 outside, I'm tired of you Mexicans, closed

20 quote?

21 A. Yes, those would have been words that he used.

22 Q. And he said to the defendant, fuck that, let's

23 fight right here, closed quote; right?

24 A. Yes.

25 Q. Again, something Mr. Diaz told you?

1 A. Yes.

2 Q. Now, did he at some point tell you about a guy  
3 named Isaiah?

4 A. Yes.

5 Q. Did he tell you that name or did you make it  
6 up?

7 A. He told me that name.

8 Q. And did he refer to Richard Torres as Vato or  
9 Richard Torres?

10 A. Vato. He also knew him as Richard Torres, but  
11 he said that his nickname is Vato.

12 Q. And he talked about the fight then; right?

13 A. Yes.

14 Q. Did he tell you that at some point after that  
15 Isaiah also started to punch on Slim?

16 A. Yes.

17 Q. Or did you make that up?

18 A. No sir, he told me that.

19 Q. Did he tell you that Isaiah was a friend of  
20 Slim's, but believed that Slim was out of  
21 order and acting crazy, and that's why Isaiah  
22 also started to punch on Slim?

23 A. Yes.

24 Q. Or did you make that up too?

25 A. No sir.

1 Q. Did he tell you that after -- that Slim bent  
2 down slightly and reached into his jacket and  
3 pulled out a handgun?  
4 A. Yes.  
5 Q. You're sure about that, Detective? I want to  
6 back up, you're not maybe confusing this  
7 interview with some other interview or some  
8 other case. Jeranek Diaz told you this?  
9 A. Yes, he did.  
10 Q. Did he tell you this gun was a silver handgun  
11 with black grips and that he thought it was a  
12 semiautomatic?  
13 A. Yes.  
14 Q. Did he tell you that Slim pulled this gun out  
15 and now pointed it at David Diaz, who was  
16 still standing close by in the kitchen?  
17 A. Yes.  
18 Q. Did he tell you that Diaz had just -- David  
19 Diaz had just turned around and was about to  
20 leave the kitchen, that Slim pointed the gun  
21 at David Diaz?  
22 A. Yes, he did.  
23 Q. Did he tell you at that point he, Jeranek  
24 Diaz, ducked down to avoid being shot himself,  
25 he heard one gunshot being fired?

1 A. Yes, he did.

2 Q. You're sure?

3 A. I'm positive.

4 Q. You didn't just misunderstand him?

5 A. No sir.

6 Q. Did he tell you that he believed the gunshot

7 was fired from Slim's gun, because the sound

8 of it came from the location that Slim was

9 holding the gun?

10 A. Yes.

11 Q. At this point Jeranek states he now sees David

12 Diaz going to the ground and Slim is putting

13 the gun back under his coat?

14 A. Yes.

15 Q. Did he tell you that? Did Jeranek Diaz say

16 those things to you?

17 A. Yes sir, he did.

18 Q. Did he tell you that he sees Slim hold the gun

19 under his coat and run out the front door?

20 A. Yes, he did.

21 Q. Did he tell you that Slim's sister, Tonia, who

22 was also in the kitchen, yelled out, oh my

23 God, you shot him, get out of here, you shot

24 him?

25 A. Yes, he did.

1 Q. And that particular part again is in quotes,  
2 correct, oh my God, you shot him, get out of  
3 here, you shot him, closed quote?  
4 A. That is correct.  
5 Q. And why did you put that part in quotes?  
6 A. Once again, that was because it was a specific  
7 statement, verbatim that he said.  
8 Q. Jeranek -- did Mr. Diaz -- Jeranek Diaz tell  
9 you that after Slim ran out the front door he  
10 went to the front door and observed Slim  
11 running around the corner?  
12 A. Yes, he did.  
13 Q. Or again, are you just making that up?  
14 A. No sir.  
15 Q. Did he indicate to you who else was in the  
16 kitchen at the time of the shooting besides  
17 him and Vato and David Diaz?  
18 A. Yes, he gave a list of people. Some that he  
19 knew by name, some that he knew by nicknames,  
20 but he did give a group of people that were  
21 there.  
22 Q. Did he indicate to you that Isaiah was in  
23 there?  
24 A. Yes.  
25 Q. What about Jay?



1 A. Yes.

2 Q. What about some guy named Dumpy?

3 A. Yes.

4 Q. Did he refer to that guy as Slim's cousin?

5 A. Yes, he did.

6 Q. Or did you just decide to make that up, that

7 there was a guy, a black Indian male, 28 years

8 of age, five nine, 160 pounds, or something

9 like that?

10 A. No sir, that's what he gave me.

11 Q. That Tonia was also there?

12 A. Yes.

13 Q. That he described her as the sister of Slim or

14 maybe a cousin?

15 A. Yes.

16 Q. Did you know whether or not Danny Wilber at

17 that point had a sister or a cousin with

18 anything close to a name like Tonia?

19 A. No sir.

20 Q. How about that Dumpy's girlfriend was there?

21 A. No sir.

22 Q. Did he also talk about a guy by the name of

23 Nando or Fernando, who was one of Vato's

24 friends?

25 A. Yes, he also mentioned them.

1 Q. You're sure?

2 A. Yes sir.

3 Q. He told you, did he not, that the September

4 before, which would have been September then

5 of '03, he sold a Cadillac to Slim and that he

6 remembered Slim signing the title Danny

7 Wilber; right?

8 A. That is correct.

9 Q. So this is a guy he had contact with before?

10 A. Yes.

11 Q. Did he talk to you what Slim had been drinking

12 at the party?

13 A. Yes, he did.

14 Q. Okay. And did he -- do you remember what he

15 said?

16 A. I'd have to refresh my recollection.

17 Q. Go ahead.

18 A. I know it was a bottle. Corona or Budweiser.

19 Q. I'll refer your attention to page 4 of that

20 document.

21 A. Corona.

22 Q. The one, two, third full paragraph there.

23 A. I'm sorry, yeah. Thought it to be a Smirnoff

24 or a Mike's Hard Lemonade.

25 Q. Did he describe to you something about what

1           happened when the defendant started drinking  
2           that? In other words, did he tell you  
3           something about the defendant making an odd  
4           face?

5    A.   Yes. When he drank it, because it was not --  
6           it is like an awkward drink, I guess, kind of  
7           like a sour, he described it as a sour look  
8           when he drank this.

9    Q.   Weren't you just kind of making all this stuff  
10          up and decided to have a little fun with that  
11          part, Detective?

12   A.   No sir.

13   Q.   When you talked to Mr. Diaz and you met with  
14          him other times, right, at least twice?

15   A.   Yes sir.

16   Q.   One time you met with him out here in the  
17          hallway outside this courtroom a few months  
18          ago; correct?

19   A.   Yes.

20   Q.   And at that time you had a copy of what's been  
21          here marked as Exhibit 49; right? Take a  
22          moment and look at it.

23   A.   Yes, I had copy of this.

24   Q.   And it basically is a -- a -- a statement from  
25          a guy named Mr. Bill Kohl who you know; right?

1 A. Yes sir.

2 Q. Saying that Mr. Diaz had told him things about  
3 his statement to you not being true and all of  
4 that; correct?

5 A. That is correct.

6 Q. Basically taking it all back?

7 A. Yes.

8 Q. Did you talk to Mr. Diaz about that?

9 A. Yes, I did.

10 Q. And what did he tell you?

11 A. He said that his was bullshit.

12 Q. Was that his word, bullshit?

13 A. Yes.

14 Q. He told you that what he told to Mr. Kohl was  
15 not true?

16 A. Correct.

17 Q. That he -- not that Mr. Kohl was lying, in  
18 other words, but just that he had told things  
19 that weren't true to Mr. Kohl?

20 A. That is correct.

21 Q. Did -- at any time in any of the times that  
22 you met with Mr. Diaz did he express fear?

23 A. Oh yes.

24 Q. And was his fear for himself or for his family  
25 or what?

1 A. His fear was for himself, his fear was for his  
2 family. He had a a newborn baby girl, I  
3 think, and he was extremely fearful that  
4 somebody was going to come and harm his  
5 family, his daughter.

6 Q. When you were talking to Mr. Diaz about what  
7 happened there in -- when David Diaz got  
8 shot -- and you've established that Jeranek  
9 Diaz and David Diaz have the last -- same last  
10 name but weren't family; correct?

11 A. That is correct.

12 Q. Was he unclear about the guy he referred to as  
13 Slim having a gun?

14 A. No sir.

15 Q. Was he unclear at all about Slim, you know, I  
16 thought maybe he pointed it up in the ceiling  
17 so you just changed it to pointing it at David  
18 Diaz's head?

19 A. No sir. When I talked to him he was very  
20 articulate. I mean, he gave a wealth of  
21 information, information that I believed would  
22 be truthful based on the fact that he was  
23 giving me -- majority of what he gave me was  
24 information that I did not know, did not  
25 have. And this would be a -- something that

1           only a person that was actually at the scene  
2           would know. I mean, he gave me names of other  
3           people that were there, descriptions of other  
4           people. Even so much as to the shooting  
5           point, he specifically talks about that,  
6           when -- when the shot actually fired, that he  
7           was ducking down himself because he was  
8           afraid.

9    Q.   He had no -- at least there was no particular  
10       beef over him and the defendant that he had;  
11       right? I mean, he could have simply said, I  
12       watched the whole thing, I saw a muzzle flash,  
13       those kinds of things; right?

14   A.   Right. He described his relationship with  
15       Danny Wilber as -- not as friends, but not as  
16       enemies, that they knew each other, that he  
17       had sold a car to him and knew him from the  
18       neighborhood.

19   Q.   Did Jeranek Diaz ever tell you anything about  
20       seeing the smoke from the shot?

21   A.   Pardon me?

22   Q.   Do you know when a handgun gets fired there's  
23       a little bit of smoke that comes out of the  
24       barrel?

25   A.   Right.

1 Q. Did Jeranek Diaz ever tell you anything about  
2 the smoke when you talked to him in February?  
3 A. I believe he did.  
4 Q. Is it in your report anywhere?  
5 A. I'd have to refresh my recollection.  
6 Q. Go ahead.  
7 A. I don't see smoke. He talks about the sound  
8 and that's what he had mentioned, the sound of  
9 the shot being fired came from the spot where  
10 he had been standing.  
11 Q. Detective, did Jeranek Diaz tell you that he  
12 saw the defendant in this case point a gun at  
13 David Diaz's head moments before there was a  
14 gunshot in that kitchen?  
15 A. Yes, he did.  
16 Q. Any doubt in your mind that that's what he  
17 told you?  
18 A. There is no doubt in my mind at all.  
19 ATTORNEY GRIFFIN: Nothing  
20 further.  
21 THE COURT: Cross.  
22 CROSS EXAMINATION:  
23 BY ATTORNEY CHERNIN:  
24 Q. Detective Schuler -- you still are called  
25 Detective Schuler, correct, even though you're

1           now retired; is that correct? Correct to  
2           address you as Detective still?

3    A.    Whatever you would like.

4    Q.    Okay. Well, okay. Detective Schuler, you  
5           have the name Dumpy in the report referring to  
6           Slim's cousin. Is it possible that that was  
7           actually Don P or Donald Jennings? It's on  
8           page 3 of your report at the bottom.

9    A.    Correct. No, the name that he gave me was  
10          Dumpy.

11   Q.    Is it possible that you just didn't hear him  
12          say Don P or Donald or Don or Donny?

13   A.    Well, it's a philosophical belief anything's  
14          possible, but in this case he gave me Dumpy  
15          and I knew it was Dumpy when I went through  
16          the statement. It was a very slow process, it  
17          took a couple hours, and I tried to get as  
18          much detail as possible, whatever he could  
19          give me. So I believe it was Dumpy, he told  
20          me Dumpy.

21   Q.    And you had no reason to disbelieve that Dumpy  
22          was the guy; right?

23   A.    Correct.

24   Q.    And when he talked about Jay, you had no  
25          reason to disbelieve that Jay was the guy he



1           was talking about; right?

2    A.   At this point, no, he is telling me something  
3           and if he tells me Jay at this point then we  
4           would investigate it further.

5    Q.   And he told you that it was a semiautomatic  
6           gun that he saw in Slim's hand; isn't that  
7           correct?

8    A.   That is correct.

9    Q.   And you have no reason -- and you were slow  
10           and you went through it carefully, and he  
11           described a silver handgun with black grips,  
12           he stated that it was a semiautomatic type  
13           handgun; correct?

14   A.   That is correct.

15   Q.   And you have no reason to say that it was not  
16           a semiautomatic gun and that he truly believed  
17           that it was a semiautomatic gun; correct?

18   A.   That is correct.

19   Q.   And you have no reason to disbelieve the truth  
20           of that statement, that in fact he saw Slim  
21           with a semiautomatic gun and Jeranek Diaz  
22           knows exactly what a semiautomatic handgun  
23           looks like; isn't that correct?

24   A.   He tells me that it was a semiautomatic  
25           handgun, and once again, I would try to take

1           it a step further, why do you think it's a  
2           semiautomatic, and he would describe it.

3   Q.    So you got a clear description from him that  
4           this was a semiautomatic handgun; correct?

5   A.    Yes.   But I mean I also understood that he saw  
6           this handgun for probably two or three seconds  
7           at most.   So he gave a description of what he  
8           described as -- what he thought was a  
9           semiautomatic handgun.

10   Q.   And he also indicated that at the time of the  
11          shooting David Diaz was to his left; is that  
12          correct?

13   A.    I'd have to look in the report, and pardon me  
14          for the glasses, I just got glasses.   They're  
15          a retired thing kind of like --

16                       THE COURT:   So did I, and I'm not  
17          retired.

18   A.    Mr. Chernin?

19   BY ATTORNEY CHERNIN:

20   Q.    Yes.

21   A.    I don't know, are you looking at a specific  
22          spot on here or a specific time?   I know he  
23          talks about them being in the kitchen, and  
24          that there's a slight hallway and they're all  
25          in a very close proximity.

1 Q. But in your report you never get to exactly  
2 where everyone was standing when he observed  
3 the shot fired; correct? Or I guess he  
4 doesn't say -- I -- I apologize, I'm not  
5 trying to trip you up.

6 When he talks about the time  
7 period around the time that the gunshot  
8 occurred, he never -- in this report, he never  
9 really describes exactly where everyone was  
10 standing, just that everyone was in close  
11 proximity; isn't that fair to say?

12 A. Right. Basically pulled out the gun and  
13 pointed at David Diaz who was still standing  
14 close by in the kitchen. Diaz had just turned  
15 around and was about to leave the kitchen and  
16 there -- it was like a kitchen and a hallway  
17 which led into a living room.

18 Q. So according to this report, Diaz is turning  
19 and walking going toward -- is turned away  
20 from Wilber, and if we used Exhibit 1, or  
21 let's use photograph -- well, let's -- I guess  
22 a diagram's good. On Exhibit 1 -- the  
23 pointer -- on Exhibit 1, living room was to  
24 the south; correct?

25 A. Yes.

1 Q. So Diaz had turned around and his head was  
2 facing toward the south, according to this  
3 report; correct?

4 A. That is correct.

5 Q. Now, in Exhibit 15, when -- in the photograph  
6 of Diaz as he appears after he was shot, his  
7 head is facing north; isn't it?

8 A. Yes, it would be.

9 Q. And are you -- do you know from your  
10 involvement in the investigation in this case,  
11 that Detective Casper found the bullet  
12 fragments -- lead fragments to the north below  
13 the stove?

14 A. Yes, I do.

15 Q. Now, if David Diaz was facing to the south,  
16 looking out into the living room, wouldn't one  
17 expect that the bullet fragments would have  
18 been found to the south as opposed to the  
19 north?

20 ATTORNEY GRIFFIN: I'm going to  
21 object, unless we know who 'one' is.

22 THE COURT: Overruled. I'll  
23 allow the question.

24 A. Well, now you'd have to start making  
25 assumptions. In -- in the victim as he's

1 turning around -- well, the first -- where he  
2 falls, I mean it's not unusual when a person  
3 gets shot, that just doesn't mean they're  
4 going to get shot and fall over straight that  
5 way. People could get shot and feel the pain  
6 and, oh my gosh, turn, his friends are in the  
7 kitchen, so does he turn, does he spin around,  
8 so I didn't think that was unusual, the body  
9 placement, just where he falls didn't really  
10 have that much impact.

11 I also know that whatever bullets  
12 or casings -- I wasn't at the scene but I know  
13 I was told that they were found in this area  
14 here, that we had a kitchen full of people.  
15 And you also had eventually other people  
16 coming in, such as paramedics or -- or  
17 responding officers. Were they kicked, were  
18 they bounced off something, was it a ricochet,  
19 there's all sorts of reasons why bullets,  
20 casings, end up where they do.

21 BY ATTORNEY CHERNIN:

22 Q. Or where the body had been found?

23 A. That is correct.

24 Q. And/or if the body had been moved, or if the  
25 body had been moved; right?

1 A. Sure. Sure.

2 Q. So in this instance it doesn't -- in your  
3 report it doesn't talk about a body spinning  
4 or the like that you're just describing, it's  
5 not something that Mr. Diaz told you; is it?

6 A. No, and -- and Mr. Diaz's attention was pretty  
7 much now fixated on Danny Wilber. After he  
8 sees him with a gun pointed at the victim,  
9 cowers down, hears the shot, looks up, sees  
10 him tucking the coat in, he then sees him run  
11 out the front and out on the street. So he  
12 would have been, by telling me that, he's now  
13 pretty much concerned about him, Mr. Wilber,  
14 and he's the person with the gun. That's who  
15 you want to be concerned about.

16 Q. None of that's reflected in your report  
17 though, that's just what you're adding now;  
18 isn't that fair to say? I mean, he doesn't  
19 talk about just being concerned, that's  
20 something that you're adding now to explain  
21 your report; right?

22 A. Oh no, I do mention in the report in detail  
23 what he observed, that he paid attention all  
24 the way.

25 Q. Does it say he paid -- solely paid attention

1 to Mr. Wilber?

2 A. No. It says he paid attention -- or it says  
3 that he described his actions, and by  
4 describing his actions --

5 Q. Whose, Slim's or his?

6 A. I'm sorry, Mr. Wilber, described his actions  
7 what he did specifically in terms of, you  
8 know, putting the gun inside, as he's going  
9 out the sister yells, you know, don't,  
10 don't -- or not don't, don't, I'm sorry -- you  
11 shot him, get out of here, something to that  
12 effect, and then watching him go out the  
13 front. And then he says he even goes to the  
14 front door and watches him go down the street.

15 Q. Where does it say that?

16 A. Would be on page --

17 Q. 3?

18 A. -- 3.

19 Q. Who says that he went to the front door?

20 ATTORNEY GRIFFIN: I'm going to  
21 ask that he allow the witness to answer the  
22 question. Does he want to testify himself?

23 THE COURT: Sustained. Go ahead.

24 A. Jeranek stated that Slim ran out the front  
25 door. Jeranek stated that after Slim ran out

1 the front he went to the front door and  
2 observed Slim running around the corner. And  
3 then in the line the -- the line or two prior  
4 to that, Jeranek states that Slim's sister,  
5 Tonia, who was also in the kitchen, yelled  
6 out, oh my God, you shot him, get out of here,  
7 you shot him. And that's what he was talking  
8 about.

9 BY ATTORNEY CHERNIN:

10 Q. And do you know if that's the same or  
11 different than other witnesses say that they  
12 had observed with respect to Mr. Diaz's  
13 position?

14 ATTORNEY GRIFFIN: Objection.  
15 Foundation.

16 ATTORNEY CHERNIN: I asked him if  
17 he knows.

18 BY ATTORNEY CHERNIN:

19 Q. Do you know whether that description is the  
20 same or different that other witnesses gave?

21 ATTORNEY GRIFFIN: Same  
22 objection. And relevancy.

23 THE COURT: Sustained.  
24 Rephrase. Well, not on relevancy, but you do  
25 need to lay a better foundation.



1 BY ATTORNEY CHERNIN:

2 Q. Detective Schuler, did you have the

3 opportunity to review the statements of other

4 witnesses to the shooting?

5 A. I have reviewed the file when I was employed

6 with the police department and I -- but in

7 terms of specific statements, I do not recall.

8 Q. Okay. So that I just -- that's all I was

9 asking. That's -- so it wouldn't be fair to

10 ask you about that now, it's been some time

11 since you looked at the file?

12 A. Correct.

13 ATTORNEY CHERNIN: I then have no

14 additional questions for Detective Schuler.

15 THE COURT: Redirect.

16 ATTORNEY GRIFFIN: I have none.

17 THE COURT: Detective, you may

18 step down.

19 THE WITNESS: Thank you.

20 THE COURT: Is the detective

21 released from his subpoena? Mr. Chernin?

22 ATTORNEY CHERNIN: Yes.

23 THE COURT: Mr. Griffin?

24 ATTORNEY GRIFFIN: Yes.

25 THE COURT: You're released from

1           your subpoena.

2                   THE WITNESS:   Thank you.

3                   THE COURT:   I'm going to have you  
4           tender those to my clerk as you walk past.

5                   (Witness excused.)

6                   THE COURT:   All right, ladies and  
7           gentlemen of the jury, it's ten minutes after  
8           the hour of five, and we're at that point in  
9           the proceedings, and it's a Friday night,  
10          where I'm going to -- you've all been working  
11          real hard, and my staff has as well, and it's  
12          time for you to go back to your lives for the  
13          weekend, your families.  We're going to take a  
14          break in the action.  You've asked me, you  
15          know, what my sense is, and I told you  
16          yesterday that I'd have a better feel for that  
17          and I wanted to see where things were going.

18                   It's my expectation, based on the  
19          number of witnesses that are left, including  
20          the cross examination by the defense of  
21          Mr. Torres, and the State has approximately  
22          four to six witnesses left, although their  
23          testimony -- and again, I don't want to  
24          project what the State's going to be putting  
25          in or not putting in with that, I think that

1       that piece of the case, that is the State's  
2       case in chief, will be concluded at some point  
3       either by noon or mid afternoon on -- on  
4       Monday.  Thereafter, the defense has an  
5       opportunity to put in witnesses, and they have  
6       indicated to me who their witness list is.

7                       And so based on those  
8       conversations with the lawyers yesterday and  
9       my rulings on several legal matters that we  
10      took up yesterday after you folks left, my  
11      expectation is that this case will go to the  
12      jury for deliberations around noon on  
13      Tuesday.  So that it looks like Monday and  
14      Tuesday of next week you're still going to be  
15      hard at work in your role as jurors in this  
16      case.  I've noticed a couple of you  
17      sniffling.  Miss Burzynski, you look like  
18      you've got a bit of a cold.  Are you feeling  
19      all right?

20                     JUROR:  Not particularly.

21                     THE COURT:  All the more reason  
22      why we're going to break tonight so that you  
23      folks have an opportunity to recoup, get a  
24      rest over the weekend, take your cold  
25      medicine, that stuff is going around, and come

1 back ready to work Monday morning. I'm going  
2 to have you report to the jury room again,  
3 Jury Management, no later than quarter to  
4 nine. I'll -- I'll let you sleep in a little  
5 bit, I'll have you report about quarter to  
6 nine. That's 8:45. My deputies will be down  
7 there to greet you, so you can be up here and  
8 working at 9:00 o'clock.

9 That gives us -- you don't have  
10 too much delays in terms of you sort of  
11 hanging around while we're doing stuff out  
12 here, and it gives my clerk an opportunity, an  
13 extra half an hour, to really try and spin  
14 some things. This isn't too bad, we only have  
15 a two-page calendar on Monday, but we're still  
16 going to have to try to spin some of these  
17 things to other courts, not to mention some  
18 trials. So we're going to be busy for about a  
19 half an hour. So I would normally have you  
20 back here, so I just think that that gives you  
21 folks a little bit more of a breather, less  
22 lag time, where you're waiting around trying  
23 to figure out what's going on.

24 So if you're back to Jury  
25 Management at 8:45 on Monday morning my

1       deputies will be down there to greet you with  
2       sunshiny faces and bring you up here to come  
3       right into the jury room or into the courtroom  
4       to again take your places in the jury box at  
5       9:00 o'clock so we can conclude this trial.  
6       Anything's possible once the weekend goes  
7       through. Sometimes things would wrap up even  
8       earlier than what I'm projecting, but I'm  
9       using my best powers of estimation here to  
10      give you sort of a ballpark figure. Could be  
11      sooner than that.

12                   And again, as I said, once you  
13      get the case, I don't put time frames on you,  
14      that's in the purview of the jury, however  
15      long it takes it takes. Some of you have your  
16      hands raised. Yes sir?

17                   JUROR: Cell phones.

18                   THE COURT: Cell phones, I assume  
19      that was yours.

20                   JUROR: It's new.

21                   THE COURT: All right. What  
22      we're going to do tonight, again, you'll be  
23      escorted out by my deputies, please do not  
24      discuss this case with each other, with  
25      anyone. You've got a longer lag time between

1       today and the -- then coming back on Monday,  
2       same rules are in effect. Don't discuss this  
3       with each other, with anyone until directed to  
4       do so by this court after all of the evidence  
5       has been presented. We're not there yet.  
6       It's coming, but we're not there yet.

7                       Do any of you have questions of  
8       me before I release you for the evening? If  
9       any of you need additional information to  
10      provide to your employers let my deputies know  
11      that as well and we can certainly accommodate  
12      you to let them know what's going on. All  
13      right. Okay. We'll see you here Monday  
14      morning.

15                     DEPUTY: All rise for the jury  
16      please.

17                     (Jury excused for the evening.)

18                     DEPUTY: You may be seated.

19                     THE COURT: I want to take up one  
20      of the side bars -- although there were many  
21      of them, one of the side bar of the two that I  
22      recall, were -- were the lawyers asked to see  
23      the court in chambers. One had to do with  
24      the --

25                     ATTORNEY CHERNIN: It's the

1 criminal record, Your Honor.

2 THE COURT: Well, there were  
3 three. One had to do with criminal records of  
4 the witnesses for today's session. And I  
5 believe it had to do with Mr. Torres's. I  
6 think it was -- eight convictions I think is  
7 what was indicated to the court. That's at  
8 least what my notes reflect. And there was a  
9 stipulation to that, that the defendant -- or  
10 the witness rather, was aware of his  
11 convictions and -- and the lawyers had gone  
12 over it with him.

13 Another one had to do with the  
14 order of witnesses this afternoon, that and  
15 the scheduling. And that was specifically  
16 with respect to interrupting Mr. Torres's  
17 testimony, where we would normally have the  
18 cross examination by the defense follow,  
19 because of the scheduling of the -- or the  
20 availability of -- of Mr. Greg Schuler, a  
21 Detective Greg Schuler, the State indicating  
22 that he was not available on Monday, that he  
23 was actually driving in from out of town this  
24 afternoon. And so as to accommodate that,  
25 would we be able to get him on and off the

1 witness stand yet today. As I understood it,  
2 the defense indicated that that was acceptable  
3 to them, and that we would simply recall  
4 Mr. Torres out of order again for the defense  
5 to have an opportunity to cross examine  
6 Mr. Torres.

7 There was a third side bar and it  
8 had to do with an objection based on the  
9 defense's objection on hearsay, and the State  
10 responding that this was a prior inconsistent  
11 statement, and so it was an appropriate  
12 hearsay exception. The court agreed and  
13 overruled the objection.

14 I think those are the summaries  
15 of those three side bars that we had during  
16 the afternoon session, but if the lawyers have  
17 recollections of additional ones or additional  
18 information that we shared during those side  
19 bars, I'll certainly let them make their  
20 record.

21 Mr. Griffin?

22 ATTORNEY GRIFFIN: I have  
23 nothing.

24 THE COURT: Mr. Chernin?

25 ATTORNEY CHERNIN: Actually,



1           there was -- there was, and it had to do with  
2           the criminal record of Mr. Diaz, as well we  
3           did -- we had one for Mr. Torres and one for  
4           Mr. Diaz.

5                         THE COURT:   Mr. Jeranek Diaz.

6                         ATTORNEY CHERNIN:   Yes.

7                         THE COURT:   Was that this  
8           afternoon's session or was it the morning  
9           session?

10                        ATTORNEY CHERNIN:   I think that  
11           was the last one we did before we broke in the  
12           morning.

13                        THE COURT:   All right.   That's my  
14           recollection, that the issue of the prior  
15           record of Mr. Jeranek Diaz was taken right  
16           before the lunch break.   And again, I allowed  
17           the lawyers to review that to make sure that  
18           Mr. Diaz understood what his prior record was  
19           and how -- what he needed to respond to when  
20           he was asked.   I don't know if I wrote down  
21           his convictions, but I'll take a look.

22                        ATTORNEY CHERNIN:   It was ten,  
23           Your Honor.

24                        THE COURT:   That's correct.  
25           That's what my notes show as well, ten prior

1 convictions.

2 Anything else, gentlemen?

3 ATTORNEY GRIFFIN: I would move  
4 46 and 47 into evidence. I'll do it again at  
5 the -- in front of the jury, but those two  
6 burned shoes.

7 THE COURT: So that the State --  
8 or is that -- the court has custody of them  
9 for the weekend?

10 ATTORNEY GRIFFIN: Yes.

11 THE COURT: 46 Is what?

12 ATTORNEY GRIFFIN: The shoe.  
13 They're both burned soles.

14 THE COURT: 46 and 47 were the --

15 ATTORNEY GRIFFIN: They're tin  
16 cans with burned shoe soles in them.

17 THE COURT: Any objection to the  
18 court receiving that, those exhibits, based on  
19 my noting your running objection to my earlier  
20 reading on whole this line of evidence?

21 ATTORNEY CHERNIN: That's --

22 THE COURT: Subject to that  
23 objection?

24 ATTORNEY CHERNIN: Yes. Subject  
25 to that objection.

1 THE COURT: The court notes the  
2 defense's continuing objection to the  
3 admissibility of Exhibits 46 and 47, the  
4 court's going to accept those into the trial  
5 record over the objection of defense counsel.

6 (Exhibits Number 46 and 47 were  
7 received into evidence.)

8 ATTORNEY CHERNIN: Now, Your  
9 Honor, with respect to the shoes, based upon  
10 the way the evidence came in through Detective  
11 Erwin, I am going to request the following. I  
12 think in fairness and in completion that I  
13 would ask the opportunity to be able to call a  
14 very brief witness by telephone, and that  
15 would be the witness that the State  
16 interviewed by telephone contact through  
17 Detective Carl Buschmann. I would otherwise  
18 ask -- and I don't think that this is a  
19 reasonable request -- and that's why I'm  
20 asking for the telephonic request, that  
21 because of the way it came in and the way that  
22 the State has the proponent of the evidence, I  
23 would ask that the State be compelled to  
24 pay -- to fly in Mr. -- I believe his name is  
25 Beaucamp. B-E-A-U-C-A-M-P. And that may be

1 my -- just my recollection spelling of it, but  
2 I would ask to be able to call him  
3 telephonically for the purpose of establishing  
4 the shoe size.

5 THE COURT: I've already denied  
6 that request, this is my fourth time, and it  
7 is going to continue to be denied. It's  
8 coming in a little differently, now you're  
9 asking to bring the witness in, but again, to  
10 testify about the shoe size, I said it's not  
11 coming into evidence, so that request is  
12 denied.

13 All right. That's it for the  
14 evening, gentlemen. It's 20 minutes after the  
15 hour of 5:00, we'll see you on Monday morning  
16 at 8:30.

17 (Proceedings adjourned for the  
18 evening.)  
19  
20  
21  
22  
23  
24  
25

1 STATE OF WISCONSIN )

2

3 MILWAUKEE COUNTY )

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5 I, Lori J. Cunico, do hereby certify  
6 that I am a Registered Professional Reporter,  
7 that as such I recorded the foregoing  
8 proceedings, later transcribed by me, and that  
9 it is true and correct to the best of my  
10 abilities.

11

12 Dated this 12<sup>th</sup> day of October, 2005, at  
13 Milwaukee, Wisconsin.

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17 Lori J. Cunico - Court Reporter

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